United States Court of Appeals

for the Second Circuit

APPENDIX

75-7061

UNITED STATES COURT OF APPEALS

for the

B

SECOND CIRCUIT

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUDGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADR, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

JOINT APPENDIX

(Volume II of II - Pages A-182 - A-624)

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs Appellants and Intervening Plaintiffs-Appellants
40 West 57th Street
New York, New York 10019
757-5050

UNITED STATES COURT OF APPEALS
FILED
FEB 20 1975
CLERK

(Additional appearances on reverse side of cover.)

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

PAGINATION AS IN ORIGINAL COPY

HON. PAUL J. CURRAN
United States Attorney for the Southern District of New York
United States District Courthouse
New York, New York 10007
Attorney for Defendants-Appellees
David P. Land, Esq.
Assistant United States Attorney - Of Counsel - 791-0054

HON. ADRIAN P. BURKE
Corporation Counsel for the City of New York
Municipal Building
New York, New York 10007
Attorney for City of New York - Appellee
Leonard Koerner, Esq. - Of Counsel
Appeals Division - 566-3322

MARTTIE L. THOMPSON, Esq.
Community Action for Legal Services, Inc.
335 Broadway
New York, New York 10013
Attorney for Intervening Defendant-Appellee
John de P. Douw, Esq. - Of Counsel - 966-6600

HON. LOUIS J. LEFKOWITZ
Attorney General, State of New York
World Trade Center
New York, New York
Attorney for State of New York
Thomas R. McLoughlin, Esq. - Assistant Attorney General -
Of Counsel - 488-2097

INDEX TO JOINT APPENDIX

VOLUME I

	Page
Relevant Docket Entries	A-1
Complaint	A-5
Amended Complaint	A-14
Answer of Lindsay, et al	A-23
Answer of Romney, et al	A-31
Affidavit of David McGregor in opposition to plaintiffs' application for a temporary injunction	A-33
Post Trial Exhibit - Letter of May 28, 1974, New York City to Hon. Irving Ben Cooper	A-52
Post Trial Exhibit - Letter of May 22, 1974, Austin K. Haldenstein to Hon. Irving Ben Cooper	A-54
Notice of Appeal	A-55
Notice of Appeal	A-57
Opinion of the Court Below	A-59

VOLUME II

Plaintiffs' Post Trial Brief	A-182
First 43 pages of Defendants' Post Trial Brief	A-498
Plaintiffs' Answering Post Trial Brief	A-541

A-182

71 Civil 4315 (I.B.C.)

UNITED STATES DISTRICT COURT
Southern District of New York

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs,

-and-

ROLAND N. KARLEN, ALVIN C. HUDGINS and CONTINUE,

Plaintiffs-Intervenors,

vs.

GEORGE ROMNEY, SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNOR and THE CITY OF NEW YORK,

Defendants.

A-183

and

STRYKERS BAY NEIGHBORHOOD COUNCIL, INC.,

Intervenor-Defendant.

PLAINTIFFS' POST TRIAL BRIEF

DEMOV MORRIS LEVIN & SHEIN
Attorneys for Plaintiffs
40 West 57th Street
New York, New York 10019
757-5600

EUGENE J. MORRIS
MARTIN STUART BAKER
Of Counsel

(7296) LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N. J. (201) 257-6850 | New York, N. Y. (212) 565-6377 | Philadelphia, Pa. (215) 563-5587 | Washington, D. C. (202) 783-7288

A-184

TABLE OF CONTENTS

	PAGE
STATEMENT	2
THE PLEADINGS AND RELIEF SOUGHT	5
THE FACTS	9
ARGUMENT	
POINT I: DEFENDANTS HAVE BREACHED THE TERMS AND CONDITIONS OF THE PLAN TO THE DAMAGE OF PLAINTIFFS AND SHOULD BE ENJOINED	34
1. THE AREA WAS DETERIORATING PRIOR TO 1962 AND THE PLAN WAS DEVELOPED TO RENEW IT	39
2. THE PLAN CALLED FOR THE INCLUSION IN THE AREA OF 2500 UNITS OF LOW INCOME HOUSING	43
3. PLAINTIFFS' RELIANCE UPON THE CITY'S COMMITMENT	46
4. THE UNDERLYING PURPOSE OF THE PLAN WAS BEING PERFORMED DURING THE PERIOD FROM 1963 TO 1970	55
5. A CHANGE OCCURRED IN THE SPRING OF 1970 AND THE CITY IS CURRENTLY VIOLATING ITS COMMITMENTS BY ALLOWING THE NUMBER OF LOW INCOME FAMILIES TO EXCEED 2500 AND BY ITS FAILURE TO COMPLETE THE PLAN	56
6. THE CITY WILL VIOLATE ITS UNDERTAKING IF IT COMPLETES THE PLAN AS IS PRESENTLY CONTEMPLATED	58

PAGE

7. THE CHANGE IN THE PLAN INVOLVED IN THE CONVERSION OF SITES 4 AND 30 FROM MIDDLE TO LOW INCOME HOUSING INVOLVES A MAJOR CHANGE IN THE PLAN AND WAS REQUIRED TO BE PROCESSED AS SUCH AND APPROVED BY VARIOUS GOVERNMENTAL AGENCIES AND THE FAILURE TO DO SO VIOLATED THE PLAN 59

8. THE PLAN REQUIRES THE WRITTEN CONSENT BY OWNERS OR LESSEES IN THE PILOT PROJECT AREA TO ANY CHANGES IN THE PLAN WHICH AFFECT THEIR PROPERTY AND SUCH CONSENT WAS NOT GIVEN 69

9. THE AREA IS PRESENTLY DETERIORATING AND HAS BEEN SINCE THE SPRING OF 1970 73

10. AS A RESULT OF THESE VIOLATIONS THE AREA IS AT OR HAS EXCEEDED THE TIPPING POINT AND WILL DETERIORATE EVENTUALLY INTO A SLUM 81

11. PLAINTIFFS ARE ENTITLED TO AN INJUNCTION RESTRAINING DEFENDANTS FROM VIOLATING THE PLAN AND DIRECTING DEFENDANTS TO PERFORM AND COMPLETE THE PLAN IN ACCORDANCE WITH ITS TERMS 105

A-186

PAGE

POINT II: NON-COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 MAKES ILLEGAL THE FEDERAL DECISION TO FUND PUBLIC HOUSING AT SITE 30 107

1. THE DECISION IS ILLEGAL BECAUSE NO ENVIRONMENTAL IMPACT STATEMENT WAS PREPARED AS PART OF THE DECISION MAKING PROCESS 107

A. The Decision not to Prepare an Environmental Impact Statement was Wrong as a Matter of Law 109

(i) The Scope of the Definition of Environment Used by the HUD Area Office was Improperly Narrow 109

(ii) The Decision Not to Prepare an Environmental Impact Statement was Wrong as a Matter of Law Because the Action was Controversial 111

(iii) The Decision not to Prepare an Environmental Impact Statement was Illegal Because the Cumulative Effects of this Decision in the Context of Numerous Other Governmental Decisions Was not Considered 113

B. An Environmental Impact Statement Should Have Been Prepared Relative to the Whole West Side Urban Renewal Area 116

C. The Decision not to Prepare an Environmental Impact Statement is Illegal Because No Opportunity was Provided for the Public or Government Agencies to Comment on it 117

A-201

A-187

PAGE

2. THE DECISION TO FUND PUBLIC HOUSING AT SITE 30 IS ILLEGAL BECAUSE THE ENVIRONMENTAL REVIEW CONDUCTED BY HUD WAS INADEQUATE AS A MATTER OF LAW 120

A. The Environmental Review was Inadequate as a Matter of Law Because There was no Consideration of a Large Number of Environmental Consequences of the Project Decision 120

B. The Environmental Review Conducted by HUD was Inadequate as a Matter of Law Because no Consideration was Given to Alternatives to the Project 127

C. The Environmental Review Conducted by HUD was Inadequate as a Matter of Law Because HUD did not Conduct an Independent Analysis of Environmental Issues 129

POINT III: THE COURT SHOULD AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO PLAINTIFFS 132

1. ATTORNEY'S FEES 132

A. Circumstances Under Which Attorney's Fees May be Awarded 132

B. Against Whom Attorney's Fees May be Awarded 136

2. COSTS 140

CONCLUSION 142

A-188

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs,

-and-

ROLAND N. KARLEN, ALVIN C. HUDGINS and CONTINUE,

Plaintiffs-Intervenors,

-against-

GEORGE ROMNEY, SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNOR and THE CITY OF NEW YORK,

Defendants,

-and-

STRYKERS BAY NEIGHBORHOOD COUNCIL, INC.,

Intervenor-Defendant.

PLAINTIFFS' POST-TRIAL BRIEF

71 Civ. 4315 (I.B.C.)

A-189

STATEMENT

This is a case of landmark proportions directly affecting community stability, the living standards of more than 35,000 people residing in a major Manhattan 20 square block community and the neighborhood's environmental qualities. The issues in this case involve the ability of individuals and institutions to rely on their Government and the serenity of their trust when participating in joint projects under strong Governmental partnership inducements. It involves the cumulative effects of a series of decisions made since 1970 which collectively have very serious implications for the community. It is a case of profound significance for the field of housing and urban development law, which will have an impact on government aided projects throughout the United States.

Plaintiffs in this case seek to maintain the well integrated nature of their community by seeking to reserve governmental action which tends inevitably to turn the neighborhood into a ghetto.

The trial before the Court without a jury occupied approximately 30 full trial days, 4,000 pages of testimony, 47 witnesses and 111 exhibits. The case concerns development of the West Side Urban Renewal Area (hereinafter the "Area") in Manhattan between 87th to 97th Streets and Central Park West and Amsterdam Avenue from inception of the West Side Urban Renewal Plan (hereinafter the "Plan") concept in the mid 1950s to date.

The action, which involves contract, Environmental and Civil Rights Law, is in equity for an injunction restraining the defendants from making or effectuating any changes in the Plan made part of the agreement between the parties, and for an order directing that future development in the Area only proceed if consistent with the Plan.

The action was instituted on October 4, 1971 against the named defendants other than intervenor-defendant Strykers Bay Neighborhood Council (hereinafter "Strykers Bay"), by plaintiffs Trinity Episcopal School Corporation and Trinity Housing Company, Inc. (hereinafter "Trinity").

Answers were filed on December 3, 1971 by the Corporation Counsel representing the City of New York (hereinafter the "City"); December 9, 1971 by the United States Attorney represenging the United States Department of Housing and Urban Development (hereinafter the "Federal Government"); December 20, 1971 by the Attorney General representing the State of New York (hereinafter the "State").

On January 11, 1972 a motion was made by several persons for leave to intervene as defendants which was granted

in part on April 13, 197 by allowing Strykers Bay to become an intervenor-defendant. An answer dated December 8, 1971 was filed by counsel representing Strykers Bay.

On July 18, 1973 Roland N. Karlen, Alvin C. Hudgins and Continue (Committee of Neighbors To Insure a Normal Urban Environment) moved to intervene as parties-plaintiffs, which was granted during trial on April 22, 1974. (672-673) Pursuant to that decision, a complaint was served on behalf of the intervenor-plaintiffs on May 22, 1974.

Plaintiffs moved on September 19, 1973 to amend the complaint and their motion was granted during trial on April 22, 1974. (673) The amended complaint was served on May 22, 1974. No answers to the amended complaint have been served.

A motion was made for a temporary injunction on July 18, 1973 which (along with the motions for intervention and for leave to amend) were referred to Senior Judge Irving Ben Cooper for an evidentiary hearing on September 19, 1973. During that hearing on September 20, 1973 the Court ordered that it be converted to a full trial on the merits. An

application was granted to withdraw the motion for a temporary injunction (197, 198). Trial proceeded on that basis, with a long interruption for ultimately fruitless settlement discussions from October 11, 1973 to April 22, 1974. Trial was completed on May 20, 1974, subject to submitting additional information pursuant to Court direction.

The motion to consider all the papers submitted on the temporary injunction and intervention motions as part of the trial record was granted by the Court on April 22, 1974. (675)

During the trial and on May 6, 1974 (2022-2027) the Court, upon the consent of all counsel, approved the application of the Attorney General of the State of New York as a party defendant from the action.

THE PLEADINGS AND RELIEF SOUGHT

There is annexed hereto as Exhibit A and made a part hereof a copy of the marked pleadings.

The plea for relief in the Amended Complaint of plaintiffs Trinity Episcopal School Corporation and Trinity

Housing Company, Inc. is as follows:-

> "WHEREFORE, plaintiffs demand judgment as follows:
>
> (a) Enjoining and restraining the defendants and each and every one of them, their agents, servants, employees or representatives from promulgating, making or effectuating any changes in the West Side Urban Renewal Plan made part of the Agreement between the parties;
>
> (b) Awarding to plaintiffs any damages which they have sustained; and
>
> (c) Such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action."

The plea for relief in the Complaint of plaintiffs, Roland N. Karlen, Alvin C. Hudgins and Continue is as follows:

> "WHEREFORE, plaintiffs demand judgment as follows:
>
> (a) Enjoining and restraining the defendants and each and every one of them, their agents, servants, employees or representatives from promulgating, making or effectuating any further changes and modifications in the West Side Urban Renewal Plan made part of the Agreement between the parties to permit the construction of more low-income housing or the admission of more low-income and welfare occupants than previously delineated in the Plan;

(b) Enjoining the construction and funding of low-income housing on Site 4 and Site 30;

(c) Awarding to plaintiffs any damages which they have sustained; and

(d) Awarding to plaintiffs such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action."

There has been no proof on the trial of the amount of damages sustained by plaintiffs.

Specifically the relief sought by plaintiffs is as follows:

1. An order reinstating the lawful designation of Sites 30 and 4 as middle income sites to be developed with middle income housing.

2. An order permanently enjoining the construction of low income public housing at Sites 30 and 4.

3. An order directing the specific performance of the Plan which was incorporated into the contracts entered into by plaintiffs with defendant, City of New York.

4. An order directing that illegal site occupants (squatters) be removed from the West Side Urban Renewal Area as unlawful and inconsistent with the Plan.

5. An order that designated new middle income buildings be returned to a 70% middle

income - 30% low income mixture, as agreed upon between the respective developers and defendant, City of New York.

6. An order by the Court retaining jurisdiction over the completion of the Plan in accordance with its legally constituted terms and appointment by this Court of a Special Master to oversee all continuing and further development in the Area, all of which is to be in accordance with the Plan; the said Special Master to have jurisdiction and supervision of all aspects of the execution of the Plan until its completion.

7. An order permanently enjoining the Federal commitment of funds to public housing at Site 30 because the National Environmental Policy Act of 1969 has not been complied with and because the environmental quality of the Area is in such jeopardy that the National Environmental policy could not be fulfilled legally and would not be served by such Federal action.

8. An order awarding costs and attorneys' fees in this action to plaintiffs.

THE FACTS

During the period subsequent to World War II and up to the early 1960's the Area which is now covered by the Plan (87th to 97th Streets between Central Park West and Amsterdam Avenue) was deteriorating. (203-213, 217-223, 1691, 2724) In the mid 1950's a study of the Area was made by defendant City of New York and on

May 28, 1959 a Preliminary Plan (Plaintiffs' Exhibits 5 (478), 6 (483), 7 (486)) was prepared. The ghetto was to be terminated and a balanced, integrated neighborhood created anew. The Plan proposed renewal of the Area by conservation of good properties, rehabilitation of salvageable properties, demolition of deteriorated properties and construction of new housing (203-213, 217-223, 467-476, 484) Private capital and maximum joint citizen participation were to be induced and encouraged as definite Plan objectives.

A final Urban Renewal Plan was approved by the Board of Estimate on June 26, 1962 (Plaintiffs' Exhibit 9) (489) incorporating the concept of the Preliminary Plan.

The earliest version of the Plan in 1956 called for 400 units of low income housing (214, 217, 3514) which was later increased to 1,000 (800 in new housing and 200 rehabilitated) units (218, 3519) and at the time of presentation of the Plan to the Board of Estimate called for 1,630 units. (Plaintiffs' Exhibit 1 (413, 494, 2726)

At that time there were a number of meetings among interested parties and high City officials (the Mayor, the Housing and Redevelopment Board, the Commissioner of Relocation, among others) at which the problems regarding the relocation of site tenants back into the Area was discussed. (Defendants' Exhibits D (437) and H (911), Plaintiffs' Exhibit 1 (413)) (220, 498-506, 830-840, 864-868, 889, 3520-3521, 3763-3678) As a result of these meetings it was agreed that the number of low income units would be increased to 2,500 and that became the basis for the allocation of housing units under the terms of the Plan.

The figure of 2,500 units of low income housing was to include new public housing projects to be built in the Area as well as projects on the perimeter of the Area, rehabilitated units of public housing and low income units to be integrated into middle income projects. (Plaintiffs' Exhibit 2 (417) (251, 357, 426, 574, 688-697, 913-915, 3534)

The 2,500 units of low income housing was repeated as the City's commitment on a number of occasions (Plaintiffs' Exhibits 1 (413), 2 (417), 3 (418), 4 (421) throughout the period from 1962 until 1970. (300-307, 2727)

The Plan went into execution in January, 1963

A-198

and was subdivided into three Sections (Section 1 from 97th Street to 93rd Street, Section 2 from 93rd Street to 90th Street and Section 3 from 90th Street to 87th Street) with Section 1 proceeding first, Section 2 next and Section 3 last. (226, 1944)

The plan proceeded during the years from 1963 to 1969 and a marked improvement in the Area occurred. Large numbers of site occupants were relocated, old deteriorated buildings were torn down and new buildings replaced them. (87, 147-150, 205-213, 223, 467-475, 484, 1181, 1695-1698, 1798-1802, 2148-2162, 2307, 2308, 2316, 2317, 2425-2427, 2731, 2976-2978a, 2983, 3188) At the same time many brownstones were rehabilitated (after clearance of their single room occupants) into owner occupied homes with middle income tenants in the new rental apartments created as a result of rehabilitation.

The new public housing projects built into the Area and on the perimeter were 120 West 94th Street, 70 units; 74 West 92nd Street, 168 units; Stephen Wise Towers, 399 units; 589 Amsterdam Avenue, 158 units (Defendants' Exhibit S); DeHostos, 223 units; 830 Amsterdam Avenue,

159 units; and Douglass Addition, 135 units (Plaintiffs' Exhibits 2 (417), 45 (1844), (574))making a total of 1,312 units of public housing in new buildings. In addition there were 276 units of rehabilitated public housing and 853 units of low income housing under State Capital Grant, Federal Rent Supplement, Section 23 leasing and Skewed Rental in middle income units making a total of 2,441 low income units constructed between 1962 and 1969. At the same time 1,776 units of middle income housing were built and 2,275 units were rehabilitated in brownstones. (Defendants' Exhibit S)

During this period from 1963 to 1969 the change in the Area was dramatic. From a deteriorating neighborhood rapidly becoming a slum it changed into a booming community, full of optimism and improvement. The demolition or rehabilitation of the old slum buildings and their replacement with new or rehabilitated structures had the catalytic effect envisioned by the planners of the project. The Area developed a nationwide reputation as a new concept for urban renewal permitting the community to retain its integrity and resulted

in a renewed neighborhood, integrated economically, ethnically, religiously and socially. (See page references at page 11, supra.) It was during this era of optimism and tangible progress that many sponsors made the commitment of time and money required to become part of this new and exciting community. Brownstones were purchased by the hundreds and a large number of sponsors made the investment required to rebuild or rehabilitate properties in the Area. It was in this atmosphere that the plaintiffs in this action made the decision either to stay on or move into the Area. (78, 80-87, 147-150, 1286-1289, 1294, 1295, 1305, 884-859, 966-975, 982-984, 1033, 1149-1153, 1176-1180, 1214, 1215, 1695-1698, 1798-1805, 2030-2037, 2160-2162, Plaintiffs' Exhibit 57 (2135) 2312, 2408-2410, 2412-2416, 2425-2426, 2975, 2981-2985, 3406, 3755-3756)

Trinity School, one of the plaintiffs in this action, which was founded in 1709, is a private, independent elementary and secondary school which is nonsectarian and inter-racial. (It should be noted that the minutes of the testimony of Eliot Lumbard (844) incorrectly characterize the school as "a four-year proprietary school." This is a

typographical error since Mr. Lumbard testified that the school is a "Preparatory" school. In fact it is a non profit school and not "proprietary" at all.)

The school is located between West 91st and West 92nd Streets, between Columbus and Amsterdam Avenues in the Area and has been at that location since 1893. (Affidavit of Edwin A. Heard sworn to the 12th day of July, 1973 admitted into evidence April 22, 1974 (675) pp. 2-5, hereinafter "Heard affidavit"). It is believed to be the oldest continuous "resident" of the Area.

Because of the deterioration which had been occurring in the Area and immediately surrounding it Trinity School was contemplating abandoning its New York facility and moving all of its operations to Pawling, Dutchess County, New York, where it already had another operating school facility.

The City strongly desired Trinity to participate in the Plan as a "leadership" sponsor because it was the oldest and largest Area institution. City initiatives at first were rejected by Trinity because of un-

certainty and complexity.

With slow development of the Plan and positive changes becoming apparent in the neighborhood by the early 1960's, however, Trinity reconsidered its plans to move out of the City. In 1963 it commenced long and careful exploration of the City's proposal that it become "sponsor" of Site 24 with the private and public agencies having redevelopment jurisdiction, with a view toward remaining in the Area. (848-850, 855-857)

Since its then existing facility was inadequate for its needs, the planned expansion contemplated the development of additional school facilities combined with provision for middle income housing on Site 24 as called for in the Plan.

Eliot Lumbard, now a Trustee of the Trinity School and President of Trinity Housing Company, was appointed to the Ad Hoc Committee of the Board and later became its Chairman. Under the leadership of Board Chairman Glover Johnson and acting for the Trustees the Committee developed and constructed the project. Mr. Lumbard has been continuously involved with it to the present time (842-843).

Based on professional advice which it had obtained, it was ascertained that Trinity could feasibly become the sponsor of Site 24 immediately adjacent to its existing

school site to the east on the block front on the west side of Columbus Avenue between 91st and 92nd Streets) and develop additional school facilities and the requisite housing above the school through a novel application of "air rights." The additional school facility would be financed with Trinity's own funds, while housing built through use of the air rights above the school could be developed as the "middle income" project required by the Plan for Site 24 under the provisions of the Mitchell-Lama Law (Article II of the New York Private Housing Finance Law, McKinney's Colsolidated Laws of New York, Volume 41). (848-850, 855-857, 966-987)

The government officials in charge of the Plan (Milton Mollen, Walter Fried, Jayson Nathan) with whom Trinity consulted, assured Trinity upon direct inquiry that the overall Area development would proceed and be carried to completion in accordance with the provisions of the Plan; that this would result in a redevelopment of the Area as an integrated community with decent, safe and sanitary housing facilities and appurtenant neighborhood amenities as provided for in the Plan; and that this would result in an upgrading of the entire neighborhood

in a manner consistent with the location of the expanded school facilities. Trinity was advised that there would be 2,500 units of low income housing and that new middle income buildings in the Area would be allocated on a basis of 30% low income and 70% middle income housing. (1091)

Trinity was persuaded both by the representations made by the government officials involved and by its own observations of what had occurred in the Area up to that point in furtherance of the Plan, that the interests of the school would be best served by a continuance and expansion of its facilities at its present location. (Heard affidavit, pp. 2-6) Trinity's Board made a policy determination to commit itself to the goal of an integrated Area, integrated in all respects, namely, economically, racially, ethnically and with full religious diversity.

After making this determination, Trinity proceeded in 1966 with the development of the project by retaining a professional development team consisting of an architect, builder, attorneys and real estate developer. The processing and construction of the project consumed a period in excess of 6 years and involved substantial investment of Trinity's funds, on an equity as well as a front or seed money basis at high risk, to bring the project to the point of approval for financing under the provisions of the Mitchell-Lama Law. After the financing was approved in 1968, the project

was built and rented on the basis of 30% of the tenants in the building being low income families and the remainder moderate or middle income families. Trinity cooperated with the authorities in effectuating this predetermined mix by agreeing to the use of various programs such as "skewing" and other subsidy devices to realize the objective of a well integrated project. The project itself has been most successful, being an integrated project both economically and racially and has been operating as such since its completion. (1014-1018)

The development, construction, ownership and operation of the property were all performed in accordance with the provisions of the agreement between the City of New York and Trinity Episcopal Schools Corporation dated June 20, 1968 (Plaintiffs' Exhibit 14) which contains the Disposition Agreement under Title I of the National Housing Act and as Exhibits, the Urban Renewal Contract between the City of New York and the Federal Government, the Urban Renewal Contract between the City and the State, the Schedule of Relocation Allowances, the Urban Renewal Plan and the Project Plan. All of these documents spell out the details of the Plan and the basic concept of how the entire Area was to be redeveloped. (Plaintiffs' Exhibit 14)

Under the Final Plan approved by the Board of Estimate on June 26, 1962 (Plaintiffs' Exhibits 1, (413), 8 (488), 9 (489), 10 (507), 14 (527)) the Area was designated as a "deteriorating area" and the Plan was characterized as "a general plan to upgrade and stabilize a deteriorating neighborhood" and is "directed towards the creation of an entirely new neighborhood and environment. ..." The old ghetto was to be destroyed and something new, more and better was the goal toward which the Plan was to strive.

During this period from 1962 to 1969, in addition to a large number of new projects, hundreds of brownstones were sold to individual owners and large sums were spent in acquiring and rehabilitating them. (Plaintiffs' Exhibit 57 (2135-2139, 2148-2151, 2160-2162))

Typical of the situation which existed as to the brownstones was the acquisition of 34 West 94th Street in the "Pilot Project Area" by Plaintiff-Intervenor Roland N. Karlen on July 18, 1968. (73, 85, 115, 116, 2617-2622, Karlen affidavit on motion for leave to intervene sworn to July 12, 1973 pp. 2, 3 and Exhibit 2, hereinafter Karlen affidavit). That Pilot Area was to be developed as the ideal for rehabilitation of decaying existing structures which could still be salvaged. Strong efforts were made by City officials to induce the initial participants into making the substantial capital investments involved in rehabilitating

an old brownstone, and moving their families into the Area.

On February 19, 1960, the City of New York promulgated what was known as a "Final Plan for the Rehabilitation Demonstration Pilot Project in the West Side Urban Renewal Area Project N.Y. D-5." (Plaintiffs' Exhibit 14 (527) annexed as Exhibit D; Karlen affidavit Exhibit 2)

The goals of that plan were as follows:

> "The purpose of the Pilot Project is to explore, test, and demonstrate, in a portion of the West Side Urban Renewal Area which was designated for rehabilitation in the Preliminary Plan, the tools and techniques available to accomplish decongestion and to promote rehabilitation as part of a general plan to upgrade and stabilize a deteriorating neighborhood. FHA Section 220 mortgage insurance and other types of financing, technical assistance and other aids, and an intensive program of code enforcement will be utilized to encourage the reconversion of rooming houses to apartment use, as well as a general upgrading of other buildings, as required.
>
> Maximum citizen participation will be encouraged and the effectiveness of voluntary compliance in a deteriorating neighborhood will be analyzed and measured.
>
> A wide range of design and plan arrangements in rehabilitated buildings will be demonstrated to obtain thereby specific data on costs and rents. The Pilot Project will permit also the development of the administrative and legal instruments necessary to achieve a rehabilitation program."

Karlen purchased his home from defendant City and covenanted to abide by the terms of the Urban Renewal Plan for the Pilot Project Area. Not only was he bound to follow the plan as promulgated, but also restrictions were placed upon the physical appearance and use of his home. Those restrictions are contained in §§113, 214 of his Contract of Sale, Redevelopment and Rehabilitation with the City of New York dated July 18, 1968. The terms of the agreement run for a 40-year period [section 113-A].(Karlen affidavit, Exhibit 2)

He decided to buy his home based upon his understanding that the Pilot Project, of which his house is a part, was to serve as a model for the entire area, which, in turn, was acknowledged as a redevelopment model for the United States. The Pilot Project was heralded as an outstanding example of social, economic and physical rehabilitation which was to serve as a cornerstone of redevelopment and a source of inspiration to the area. (Karlen affidavit pp. 2, 3)

In his search for a suitable home for himself and his family, he was shown literature prepared by the Housing and Redevelopment Board of the City of New York for those who

wanted to buy City-owned brownstones, which included a map of the Area. (Plaintiffs' Exhibits 10 and 13) That map showed that the Area was being redeveloped as a modern community integrated along racial, economic, ethnic and religious lines. At the time he was interested and did purchase his home from the City he spoke with William C. Hunter, Field Director of the Area, and Joseph Lauria, Mortgage Consultant on the project. (Karlen affidavit pp. 3, 4) (78, 80-85, 87)

Based upon his observation of what was happening in the Area, the representations made by the officials of the City and the literature and brochures furnished to him as well as the provisions of the Plan itself, Karlen acquired 34 West 94th Street and rehabilitated it for himself and his family along with six apartments for rental. The total expenditure for acquisition and rehabilitation was $148,800. (85, 115, 116) He moved into the property and has lived there with his family since that time. (86)

The Plan for the Demonstration Pilot Project Area provides that changes in the approved Plan may be obtained only upon the written consent of those in the Pilot Area as follows: (Plaintiffs' Exhibit 14)

> "This Final Plan may be modified at any time by the City of New York, provided that if any such modification affects any real property previously disposed of by the City in the Pilot Project area, written consent to such modification must be obtained from the purchaser or lessee of such real property."

He has not consented to any change and at no time has he ever been contacted or asked to consent in writing to any change in the Plan. (2618-2621)

Plaintiff-Intervenor Alvin C. Hudgins also, based upon the same representations Karlen had received and upon the provisions of the Plan, contracted to purchase a brownstone in the Pilot Area at 29 West 94th Street, on February 11, 1971 in which he resides, along with the adjacent brownstone at 27 West 94th Street. (Plaintiffs' Exhibits 35, 35A, 36, 36A). He rehabilitated these buildings at a total cost for acquisition and rehabilitation of $265,000. (1216)

He moved from a segregated area of Queens in order to live in the integrated West Side Urban Renewal Area. (1171-1180)

A large number of other sponsors who are represented by plaintiff-intervenor Continue made similar investments

A-211

in the Area based upon similar observations and representations.

Beginning in the spring of 1970 a significant change occurred in the processing of the Plan with the advent of the illegal site tenants (squatters) illegally moving into the Area. That event triggered a radical modification in the execution of the Plan. Whereas previously the Plan was being carried into execution in accordance with its provisions and with the commitments made by the City of New York (albeit at a somewhat slower rate than originally estimated) in 1970 the whole atmosphere and attitude toward the Plan changed. Pressure was exerted upon the City by politicians and various social action radical groups for the creation of more low income units, regardless of the Plan. The ostensible reason they gave was to make provision for relocating site tenants back into the Area (225-228), but the squatters were not such and the real objectives were political, as typified by political leadership such as El Comite.

As of 1970 a number of City owned buildings slated for demolition (many of which were located in Section 3 of the Area) had been largely cleared of site tenants and were ready to be demolished as soon as the new construction was ready to be commenced. Led by a radical group and surreptiously, at night, over 200 squatters illegally moved into these buildings and occupied empty apartments in them (1306-1311, 2318-2320).

A-212

The City, instead of acting promptly to remove them as required by law and by the provisions of the Plan, procrastinated and allowed the squatters to remain. In fact, the City eventually gave full tenant rights to the squatters. (3170-3172, 3184-3185)

By this time the Plan had bogged down badly on its time schedule. Ten of the new Mitchell Lama buildings had been built and occupied before 1970 and eleven more were in construction or had funding which would permit closings to be had shortly. However, there were eleven additional sites for which funding was not available and it was not clear when they could get into construction. (Defendants' Exhibit S)

This lack of tangible progress in completing the Plan combined with the advent of the squatters caused concern to the sponsors who had made personal and financial commitments to the Area and they organized themselves into the group called Continue (Plaintiff-Intervenor) for the purpose of ensuring that the Plan would be performed in accordance with its terms and with the commitments made by the City to the sponsors. (151-163)

A-213

Upon the Continue group being formed it conducted many meetings and prepared informational bulletins and materials for its members. It met with Strykers Bay (Defendant-Intervenor), various Block Associations and with various governmental and elected officials and wrote many letters to the governmental and elected officials in charge of the project. (163-168, 2991-3006, 3016-3021)

These activities were opposed by Strykers Bay and various other groups which were pressing for an increase in the number of low income units to be built into the project. Considerable tension developed in the Area as these groups opposed each other in their fundamental philosophy as to what should happen to the Area. (3015-3021, 3061-3072)

In furtherance of the concept of bringing more low income units into the Area a proposal was made for the conversion of Sites 4 and 30 from middle income to low income housing. (Plaintiffs' Exhibits 23, 24, 25, 26, 27, 28) This was vigorously opposed by Continue but, nevertheless, was approved by the City officials in charge and eventually by the City Planning Commission and the Board of Estimate. (Defendants' Exhibit B attached documents "k" and "l")

The approval was for public housing on Sites 4 and 30 but no approval was obtained for a change in the Plan modifying the use of these sites from middle income to low income housing, as had been done previously with the four other changes in the Plan (Plaintiffs' Exhibits 11, 15, 16, 17, 18, 19, 20, 34).

At or about this time there occurred a change in the standards and procedures for the admission of tenants into public housing. Whereas previously full screening of families was performed by the City Housing Authority before apartments were rented to them the policy was changed and only limited screening was authorized by law resulting in the admission into public housing of a large number of multi-problem families who heretofore would not have been admitted. (235-236, 345-350, 779-786, 3811, 3812, 3814-3822)

In 1971 and 1972 Leader House, Site 20, Columbus Manor, Site 21, and Westwood House, Site 22 were occupied ostensibly on the basis of 30% low income and 70% middle income housing (Defendants' Exhibit S). However, when the tenant screening process was employed by Strykers Bay welfare families were rented apartments in the 70% middle income

units in these buildings thus creating a situation where more than 50% of the tenants in these buildings were of low income. Thus, over 200 welfare families were admitted into projects in the Area in the middle income portions of the Mitchell Lama buildings. (230, 1859-1889, Plaintiffs' Exhibits 46, 54) This change came about as a result of a decision of the Department of Social Welfare to rent apartments in middle income buildings to welfare families (230, 231, 254-257). Moreover, the income limits applicable to the Federal Section 236 subsidy in Leader House, Columbus Manor and Westwood House are approximately the same as current income limits for public housing and consequently the occupancy of these units was tantamount to public housing (3362). Thus, in essence, almost the full occupancy of these three buildings, consisting of a total of 600 units, is low income housing.

From 1970 to the present time six projects were completed and occupied (in addition to Leader House, Columbus Manor and Westwood House) adding 873 units of middle income housing and 235 units of low income housing (Defendants' Exhibit S).

At the present time, there are a total of approximately 3,300 low income families on the site -- made up of the 2,441 units built prior to 1970, 274 squatter families, and the 600 units in Leader House, Columbus Manor and Westwood House. This is over and above the number of low income site families who have not as yet been relocated (Plaintiff's Exhibit 45).

Thus, as the Area stands at the present time, even in its incomplete state, the number of low income families exceed the City's Commitment of 2,500 units by over 800 units.

If the Plan is completed as presently contemplated including 430 units of low income housing in Sites 4 and 30 and an additional 539 low income units in the 9 additional projects in planning (Defendants' Exhibit S), there will be a total of 4,130 units of low income housing. The foregoing does not take into account the number of welfare families which will be included in the 70% middle income portions of the buildings in planning or the number of Section 23 leasing or Section 236 families

bulldozer operations where all the tenants in the deteriorated

to be included in the proposed new buildings. (Defendant's Exhibit S)

In addition there will be the concentration of 860 units of low income housing on 91st Street which comes about as a result of the 399 units in Stephen Wise Towers (Site 29), 168 units in Site 25 and 160 units in Site 30, making a total of 727 low income units which is augmented by the 57 units in Trinity's Site 24, the 20 units in St. Martin's Tower, Site 31, and the 56 units contemplated in Site 28, Heywood Broun Tower, making a total of 860 units or more than an 80% concentration of low income units on one street in the Area. This is a pocket ghetto in the term of Otero v. NYCHA. (Defendant's Exhibit S)

Plaintiffs' testimony has established that the improvement of the Area which occurred during the period from 1963 to 1969 has been reversed by the events which have transpired since 1970. The Area is now deteriorating as evidenced by an increase in crime, dope addiction, juvenile delinquency, prostitution, alcoholism, garbage, noise, graffiti, congregating on sidewalks, etc. As a result, middle income residents are fleeing the area and environmental conditions are

getting progressively worse. Two brownstone owners who testified have already sold their newly rehabilitated buildings and have left the Area. A number of others have stated they will do so unless there is an improvement of conditions in the Area (hopefully as a result of the decision in this case). (88-130, 154-168, 1306-1321, 1541-1546, 229-234, 541-545, 550, 554, 555, 594-596, 600-603, 608, 1021-1029, 1217-1224, 1426-1429, 1440-1460 Plaintiffs' Exhibit 42 1647-1675, 1699-1710, 1819-1820, 1825-1832, 1850-1852, 1854-1856, 2058-2063, Plaintiffs' Exhibit 55, 2248-2250, 2169-2173, 1670-1671, 2257-2295, 2316-2358, 2428-2446, 2557-2608, 2732-2743, 2983-3021)

The five expert witnesses called by plaintiffs (Starr, Fried, Sulzberger, Kristof and Gaynor) all testified that the Area is either at, or has passed the "tipping point" and that unless the procedures currently in effect are reversed the Area will continue to deteriorate and eventually the upper and middle income families will flee and the Area will again

become a slum, thereby negating all the time, money (in the hundreds of millions of dollars) and effort put into the Plan. (230,236, 254-264, 283-368, 406-409, 425, 426, 434-435, 444-481, 554-555, 570, 574-581, 612, 627, 662-664, 688-697, 1461-1463, 1700-1711, 2508-2551, 2644-2654, 2750-2754, 2855-2857)

The defendants prepared a Project Selection Criteria Study (Defendant's Exhibit B) and a negative

Threshold Decision (Defendants' Exhibit E) and found there was no need for the filing of a full Environmental Impact Statement.

The environmental quality of the Area improved between 1960 and 1970. However, since the advent of the squatters in the Area and the introduction of welfare families in middle income buildings above the prescribed 30% basis, the environmental quality of the Area has declined. Distinct signs of blight and decay, of neighborhood instability and fear of crime, and of social unrest, have insidiously appeared. A large number of community residents have been the victims of the more active manifestations of this blight and instability or have been aware of them. Fear of muggings, robbery, physical violence, garbage, graffiti, unsafe and unsanitary conditions, noise and squalor is rampant and notorious in the Area.

Numerous communications, private meetings and appearances at public meetings and hearings were made by plaintiffs and others to express to defendants their concern about the decline in the quality of environmental conditions in the Area. The issues raised by these plaintiffs and others were substantive, concerning the environmental quality of

their neighborhood. Certain government decisions were at issue, including the redesignation of Sites 30 and 4 for low income housing, the acceptance and illegal legitimization of squatters and the increase in welfare tenancies in the area. These issues were known to officials of The City of New York and of the Department of Housing and Urban Development well before they made their decision to fund low income housing at Site 30.

In spite of the effects of the change in Site 30's designation to low income housing on the environmental quality of the Area, defendants failed to consider these implications and failed to make an Environmental Impact Study. The issues raised include the cumulative effect of the decision on the racial and economic balance of the Area, to wit, tipping, issues of urban blight, urban decay, neighborhood stability, the social and cultural and aesthetic dimensions of the urban environment, urban design and the quality of the built environment together with community attitudes and fears. All of these should have been considered and a full Environmental Impact Study should have been made.

There is annexed hereto as Exhibit B a detailed analysis of the testimony in the Record of the 47 witnesses who testified on the trial.

There is also annexed hereto as Exhibit C a detailed description of the 70 Exhibits introduced into evidence and marked for identification during the trial by the plaintiffs.

POINT I

DEFENDANTS HAVE BREACHED THE TERMS AND CONDITIONS OF THE PLAN TO THE DAMAGE OF PLAINTIFFS AND SHOULD BE ENJOINED.

The major portion of plaintiffs' prima facie case remains uncontroverted. There are only two areas essential to plaintiffs' argument where there is conflict in the testimony:-

1. That the Area has been deteriorating since the advent of the squatters in the spring of 1970; and

2. That the tipping point in the Area has been reached or exceeded at the present time and in any event will be if the project is completed as contemplated.

As to all other aspects of plaintiffs' case they are either conceded or plaintiffs' affirmative proof has firmly established them and that proof is in no way met by proof to the contrary.

This action was brought by Trinity because of the dire consequences to it of the breaches by the defendants

of their representations and obligations under the Plan. Trinity, in good faith and in reliance upon the commitments made by the City invested in excess of $9,000,000 of its own and borrowed funds. It also made the determination to stay in the Area (indeed to stay in the City) based upon its understanding that the Plan would result in the resuscitation of the Area which was previously deteriorating and which was rapidly becoming unsuitable. It was becoming unsuitable as a location for the fulfillment of its function as a venerable institution of learning which draws its student body and faculty from all parts of the City.

The commitment to stay in the Area was predicated upon the understanding that its redevelopment would result in a new community. This new community was represented as having been engineered into a neighborhood which would be balanced; integrated economically, ethnically, religiously and socially. Trinity's commitment was finally made in 1968 when there was visible evidence surrounding them of the City's full and faithful performance of the Plan.

Trinity performed fully under the terms of its contract with the City.

The City, however, in callous disregard of its obligations and in response to political and other radical pressures, reneged on its responsibilities under the Plan. The City has acted in a manner which has reversed the progress prevously made, starting the Area on the downgrade again. Unless there is intervention by this Court all prior progress will be negated and the Area will inevitably become a segregated slum.

It was under these circumstances that Trinity was compelled to take the radical step of instituting this action for the good of its own people and the other participants in the Plan in the neighborhood who are being so adversely affected by the defendants' acts.

As to the Breach of Contract action plaintiffs established the following proof:-

1. The Area was deteriorating prior to 1962 when the Plan was approved and the Plan embodied a well conceived and imaginative concept for reversing the blight which existed in the Area.

2. The Plan called for the development of the Area to be integrated economically, socially, racially and religiously and this was to be accomplished by the inclusion of 2500 units of low income housing to be spread throughout the Area and its perimeter by including seven public housing projects, two public housing rehab projects and the low income units arrived at by skewing or subsidy in the new middle income projects (in the last buildings completed on a 70 - 30% ratio).

3. Plaintiffs relied upon the commitment of the City to an integrated project in making their agreements to stay or come into the Area and made substantial financial investments in the construction of new housing or the rehabilitation of brownstones.

4. The Plan, which went into execution in January, 1963, was carried forward successfully during the period from 1963 until early 1970. This resulted in the rebuilding, rehabilitation and conservation of most of the buildings in Stage 1 (97 to 93 Streets), a large number of the buildings in Stage 2 (93 to 90 Streets) but few of the buildings in Stage 3 (90-87 Streets). Although the development during this period was somewhat slower than originally anticipated it did move forward and there was tangible evidence of improvement in the Area.

5. This situation changed in the early part of 1970; the improvements which had been going on in the Area were reversed; and a process of deterioration set in which has been accelerating up to the present time. The City is currently violating its agreements by allowing additional low income families to come into the Area in the form of squatters in the

old buildings slated for demolition; welfare families in the middle income portions of the new buildings; using Section 236 housing with income limits which approximate current public housing limits so that the present number of low income families in the Area exceeds 3300 units and by delaying the completion of the Plan beyond the time contemplated.

6. The City has violated its undertaking with the plaintiffs by moving to complete the Plan as presently contemplated by including Sites 4 and 30 as public housing instead of middle income housing; by the inclusion of 30% low income housing in the new projects to be built; by allowing welfare families in the middle income portions of the new buildings and by using Section 236 housing with income limits which admit only low income families so that the number of low income families to be included in the Plan when completed will exceed 4130 units.

7. The change in the Plan which converted the use of Sites 4 and 30 from middle to low income housing was a major change which required a plan change to be processed as specified in the Plan and approved by the Federal Department of Housing and Urban Development, the City Planning Commission, the Board of Estimate and the New York State Division of Housing and Community Renewal. That change was not effected or approved as required by the Plan and consequently violates the Plan.

8. The Plan requires the written consent of purchasers or lessees in the Pilot Project Area to any modification of the Final Plan where such modification affects the real property previously disposed of by the City. No such written consent has been given by owners or lessees in the Pilot Project Area to the changes in the Plan which converted the use of Sites 4 and 30 from middle to low income housing and which affect their property.

9. The Area is presently deteriorating and has been since the spring of 1970.

10. As a result of these violations the Area is at or has exceeded the tipping point and will deteriorate eventually into a segregated slum.

11. Accordingly plaintiffs are entitled to an injunction restraining the defendants from continuing to violate plaintiffs' rights and directing that the defendants perform and complete the Plan in accordance with its terms.

In the discussion to follow each of these factors will be considered seriatim:

1. THE AREA WAS DETERIORATING PRIOR TO 1962 AND THE PLAN WAS DEVELOPED TO RENEW IT

The National Housing Act of 1949 under Title I provided for urban renewal of deteriorated areas in a manner which was characterized as "slum clearance." This led to the development of a number of urban renewal projects where a badly deteriorated area was totally cleared and rebuilt in its entirety in accordance with the provisions of an urban renewal plan. This procedure was employed in a number of projects on the west side of Manhattan such as the Linclon Square Urban Renewal Project, the Morningside Gardens Urban Renewal Project and the development of Park West Village. All of these entailed

bulldozer operations where all the tenants in the deteriorated areas were relocated, all the buildings were demolished and entire new communities were built in accordance with the predetermined urban renewal plan.

The provisions of the National Housing Act were amended in 1954 to expand the scope of urban renewal and slum clearance procedures to encompass areas which were deteriorating but not fully deteriorated, by providing for redevelopment of these areas on the basis of conserving the good properties, rehabilitating the properties that were salvageable and relocating the tenants, demolishing the buildings and rebuilding those areas which were fully deteriorated. This technique was applied where it was possible to salvage marginal areas which were on the downgrade but which could be preserved by the development of an urban renewal plan having the benefit of federal, state and city subsidy. (Affidavit of Eugene J. Morris, sworn to July 12, 1973 admitted into evidence April 22, 1974 (675) pp. 2, 3 hereinafter Morris affidavit.)

Following the 1954 amendments, the City concentrated its activities on the remaining areas of the West Side of Manhattan which were deteriorating rapidly but which had not yet become full slums. Attention was focused upon the 20 square block area between 87th and 97th Streets and Central

Park West and Amsterdam Avenue which was designated as the Area.

The west side of Manhattan in which the Area is located was once one of the finest residential areas of the City located between two great parks (Central Park and Riverside Park) with the finest conveniences available in the City in the form of transportation, schools, churches and proximity to the main cultural and business centers of the City. The area included the entire Columbia University and Barnard College complex as well as Riverside Church, the Cathedral of St. John the Divine, the Museum of Natural History and a host of other City landmarks.

During the depression of the 1930's and the years of World War II, the Area underwent a process of deterioration. By 1946, some parts of the Area had already become slums and other parts were deteriorating rapidly even though there remained many pockets of fine residential buildings located on Central Park West, Broadway, West End Avenue and Riverside Drive.

Thus, when the National Housing Act of 1949 was enacted and the New York City Slum Clearance Committee under the directorship of Robert Moses was created to implement the

procedures made available under Title I, it was the west side of Manhattan which became the area of major concentration by the Slum Clearance Committee. However, because the Slum Clearance Committee in its earlier projects had developed its projects on a bulldozer basis, the City of New York set up a new agency known as the Urban Renewal Board of the City of New York under the chairmanship of James Felt in 1955 which proceeded with the proposal for the redevelopment of the Area under the provisions of the 1954 amendments to the National Housing Act. (Morris affidavit p. 3)

The Urban Renewal Plan evolved after a most extensive planning evaluation by private and governmental agencies. The Plan was developed after extensive hearings and input from urban renewal specialists of all types as well as from the local community in the Area. From the earlier studies which began in 1955, a preliminary plan was approved in 1959 providing for 46 urban renewal sites (complete relocation, demolition and new construction) with hundreds of buildings slated for rehabilitation and hundreds more slated for conservation. (Morris affidavit, p. 3,4)

The Plan envisioned an ethnically, racially,

economically and religiously integrated community and would have prevented the flight of middle and upper income families from the Area. It was geared to an uplifting of the Area and a reversal of the trend of deterioration which had been going on for over two decades. (Plaintiffs' Exhibits 5, 6, 7, 8, 9, 10)

There is not only no dispute in the Record as to the correctness of plaintiffs' contention on this point but the defendants' own testimony reaffirms it.

2. THE PLAN CALLED FOR THE INCLUSION IN THE AREA OF 2500 UNITS OF LOW INCOME HOUSING

At the time of approval of the Plan in 1962 it called for the development of 1630 units of low income housing. Questions were raised at the time, however, as to the adequacy of that number of low income units in view of the number of low income relocatees who were entitled to a preference in the Area. In fact, Herman Badillo, then Deputy Commissioner for Relocation, filed a report in which he recommended an increase in the number of low income families. (Defendants' Exhibit D)

A meeting occurred at about that time with the Mayor, the Deputy Mayor, the Housing and Redevelopment Board and Commissioner Badillo at which it was agreed to increase

the number of low income units to 2500 and an announcement to that effect was made by the Mayor. (Defendants' Exhibit H) This figure of 2500 low income units was repeated subsequently on a number of occasions by various City officials as one of the objectives of the Plan (Defendants' Exhibit F, I, J, Plaintiffs' Exhibits 2, 3, 4) and was accepted as the basis for the economic mix of residents in the Area. It was told to all who inquired as to the objectives of the Plan although the figure itself was not included as part of the formal printed Urban Renewal Plan itself.

The 2500 units included the 7 public housing projects to be built in the Area and on the perimeter as follows: 120 West 94th Street, 70 units; 74 West 92nd Street, 168 units; Stephen Wise Towers, 399 units; 589 Amsterdam Avenue, 158 units (Defendants' Exhiibt S) and DeHostos, 223 units; 830 Amsterdam Avenue, 159 units and Douglass Addition, 135 units, totalling 1312 units (Plaintiffs' Exhibit 45)(574,575) along with the two public housing rehabilitation projects totalling 276 units (Defendants' Exhibit S).

In addition there was to be internal integration in each of the new middle income buildings amounting to 853 units

by the use of a number of programs such as "skewing of rents" (a procedure whereby rents in a particular building are arbitrarily varied so that some are for higher income and some are for lower income families but where the overall average is fixed at the level required to operate the building economically); Section 23 public housing leasing (a federal subsidy program where individual apartments in a building are rented at the market rental by the local housing authority and then subleased to a low income family at a public housing rental with the difference being subsidized under the federal public housing program); Federal Rent Supplement (a federal program where individual apartments in a building are rented at the market rent and then subleased to a low income family at a public housing rent with the difference being subsidized by the Federal Department of Housing and Urban Development); State Capital Grant (a state program which operates in the same manner as the federal Section 23 leasing and rent supplement programs where the apartment is leased at a market rent and subleased to a low income family with the State picking up the difference).

The figure of 2500 was used throughout the period

from 1962 until 1970 as the optimum number of low income units for the Area. It was not intended as a minimum or a maximum but as an objective to be reached. Indeed some of the statements showed 2465 and others showed 2556 but the general figure of 2500 was understood by all concerned to apply during that period.

This position is likewise not contravened and in fact is affirmed by defendants' testimony.

3. PLAINTIFFS' RELIANCE UPON THE CITY'S COMMITMENT

The figure of 2500 units of low income housing was relied upon by the sponsors of both new housing and rehabilitation projects as the touchstone for integrating the entire Area and in effect became part of the commitment by the City to all sponsors.

Each of the witnesses called by plaintiffs testified that they were told that one of the objectives of the Plan was to integrate the Area economically, ethnically, racially and religiously when they made their commitment to stay in or move into the Area and to make a financial investment in it.

They were also told that the basis for creating a viable integrated neighborhood which would remain integrated

was to include 2500 units of low income housing. This would permit the City to deal equitably with the relocatees and at the same time preserve a healthy economic mix in the Area.

Thus, this figure of 2500 units, in effect, became engrafted into the various agreements being made by the City with sponsors and other persons making a commitment to the Area under the terms of the Plan and became a binding obligation of the City to perform.

The law is clear that this provision is enforceable as part of the contract. A contract includes not only the terms set forth in express words, but all implied provisions indispensable to effectuate the intention of the parties in carrying out the contract.

It is a well-established principle that an implied term is as enforceable as an express term. As far back as Grossman v. Schenker, 206 N.Y. 466, 469 (1912), it has been recognized that: "What is implied in an express contract is as much a part of it as what is expressed...." This principle has been cited and followed in Fellows v. Fairbanks, 205 A.D. 271, 199 N.Y.S. 772, 775 (1923); Cullen Fuel Co. Inc. v. W. E. Hedger, Inc., 290 U.S. 82,88 (1933); and many other cases in

both the state and federal systems. There appears to be little problem once it is established that a term should be implied: the problem is, when will a term be implied?

Generally, a term will be implied when: (1) it is not inconsistent with the express terms of the contract; and (2) when there arises from the language of the contract and the surrounding circumstances an inference that the introduction of the implied term is necessary to effectuate the intention of the parties. 11 Williston on Contracts, §1295 (3rd ed. 1968). Murray v. City of New York, 165 Misc. 125, 300 N.Y.S. 425, 428; aff'd. 252 A.D. 853, 300 N.Y.S. 430 (First Dept., 1937). Suburban Club of Larkfield v. Town of Huntington, 56 Misc.2d 715, 289 N.Y.S.2d 813, modified 30 A.D. 2d 541, 291 N.Y.S.2d 1013 (modification not relevant).

It appears to be fairly well settled that a term which is necessary to effectuate the intent of the parties will be read into a contract. In our case the intention of the parties to the site-sponsor contracts was to create and maintain an ethnically and economically balanced community. To effectuate this intent a covenant to maintain the number of low income units available at no greater than 2500 must be

read into the contract. Further, Suburban Club of Larkfield, supra, suggests that public hearings and official statements may be considered the surrounding circumstances from which the intent of the parties and necessary implied terms may be supplied.

More specifically the court will always imply a covenant to do nothing to impair the rights of a party to the agreement and to refrain from conduct which destroys the rights of the other party to receive the fruits of the contract.

In Kaminsky v. Kahn, 13 A.D.2d 143, 213 N.Y.S.2d 786 (First Dept., 1961), plaintiff had a right of first option to repurchase stock sold to defendant, and defendant could not interfere with this right by offering the stock for sale to someone else. The court cites Wood v. Lucy, Lady Duff-Gordon, 222 N.Y. 88, 118 N.E. 214 (1917), as supporting the principle that in any agreement there is an implied covenant that nothing will be done to impair the rights of a party to an agreement. In our case a covenant should be implied on the City's behalf to do nothing to interfere with the sponsors' rights to have a balanced community.

The courts have also implied a term of reasonable

duration where a contract has been indefinite as to time. In Hammond v. C.I.T. Financial Corp., 203 F.2d 705 (2nd Cir., 1953) the court held that an exclusive sales contract was not terminable at will because it was indefinite as to time, because a reasonable duration would be implied. In Rochester Park, Inc. v. City of Rochester, 38 Misc.2d 714, 238 N.Y.S.2d 822 (1963), aff'd. 19 A.D.2d 776 (4th Dept., 1963), which will be discussed in greater detail below, the court stated that where dates were not specified and were made contingent upon other occurrences, the law would imply a requirement of performance within a reasonable time of the occurrence of the precedent events. Where a precise determination of dates was impossible a term of a reasonable period, with consideration to the objectives of the contract, is implied. By analogy, at the time of execution of the sponsor contracts a precise determination of the number of low income units was impossible, an implied term of a reasonable number with consideration to the objectives of the contracts would save the contracts from indefiniteness.

Rochester Park, Inc. v. City of Rochester, supra, involved an action against the City for breach of a contract between plaintiff and the City in connection with a proposed

urban renewal project. Plaintiff's contract, which was unanimously approved by the City Council, provided that plaintiff would employ a planner acceptable to the City and would cooperate with the City in formulating a redevelopment plan to submit for approval to the Housing and Home Finance Agency (HHFA)(the federal predecessor of HUD); and upon approval the City would by appropriate means acquire title to all property in the area; demolish structures; relocate people residing in the area; make improvements required for the redevelopment plan; and sell the area at public auction as provided by Section 507 of Article 15 of the General Municipal Law. Plaintiff cooperated with the City for approximately one year and expended a substantial sum of money in furtherance of the contract, until notified by the City that HHFA had denied approval and therefore the City considered the contract null and void. The contract in this case did not involve disposition of redevelopment land, but rather it involved cooperation in developing a redevelopment plan. This being the purpose of the agreement, the court stated that there is an implied obligation to cooperate in furtherance of this purpose: "It is fundamental in the law of contracts that a bi-lateral contract invariably contains an

implied and inherent requirement on both parties to cooperate with each other in achieving the aims of the agreement." Rochester Park, Inc., supra, at page 826. [N.Y.S.2d]

One of the grounds for defendant's motion for summary judgment was that the contract was indefinite and uncertain. While the contract left "requisite improvements and other terms and conditions" to later determination by one of the parties, the court did not consider this indefinite because it would be governed by the redevelopment plan which was the object of the agreement, suggesting that the court will imply the conditions of the plan as proposed and approved as terms in the original agreement.

By analogy, the purpose of the contract between the plaintiffs in our case and the City was to further the purpose of the Plan, i.e., the creation and maintenance of a viable integrated community. Although the contract itself did not specify the number of units essential to the maintenance of a balanced community, the court should imply those terms which were established by the Plan as conditions of the contract because they will be governed by determinations made in furtherance of the purpose of the contract. Further, the court in Rochester Park, Inc., supra, states that although it is beyond

the control of either party whether state and federal approval would eventuate, it was a risk which each impliedly agreed to cooperate with the other in meeting. By analogy, although neither plaintiffs nor the City knew if a balanced community would in fact result, an agreement to cooperate to try to create such a situation must be implied.

Thus the Rochester Park case stands for the proposition that even though a written contract existed, the surrounding circumstances are necessary to the interpretation of that contract.

Considered specifically plaintiff Trinity relied upon this commitment by the City in that one of the reasons for making the decision to remain in the Area and not move its school to Pawling was the commitment by the City that the Area would be redeveloped on an economically integrated basis. The essential ingredient of a successful and firmly integrated community is observance of the commitment to a limit of approximately 2500 units of low income housing since the Area would not remain integrated if that number were exceeded because the tipping point would be passed and the Area would eventually become segregated. It was on this representation that Trinity

invested almost $9 million to stay in the Area. (972-975)

Plaintiff-Intervenor Karlen relied on the City's commitment to keep the total number of low income units to approximately 2500 in purchasing and rehabilitating his brownstone at 34 West 94th Street. He moved into the Area and invested $148,800 in his house. (85, Karlen affidavit p. 2-9)

Plaintiff-Intervenor Hudgins relied upon the same commitment in buying and renovating two brownstones at a cost of $265,000. (1216, Hudgins affidavit p.2-6)

The members of CONTINUE who likewise relied upon the City's commitment in buying and rehabilitating brownstones in the Area at great cost were Dr. Jerome Fine (136,137), Lisa Liebert (1787,1788,1796,1797,1815), Mrs. Dina Sours (2304,2312) and Mr. Paul Friedberg (2408-2410).

The tenant-cooperator Miles Owen also relied upon the City's commitment in moving into the Area and purchasing his cooperative apartment. (2555)

The cumulative testimony of these witnesses establishes that the plaintiffs relied upon the commitment of the City to limit the number of low income units in the Area to 2500. This becomes conclusive when we realize that there was

no evidence adduced by defendants to the contrary.

4. THE UNDERLYING PURPOSE OF THE PLAN WAS BEING PERFORMED DURING THE PERIOD FROM 1963 TO 1970.

The City proceeded with the performance of the Plan commencing in January 1963 and continued through the remainder of the decade of the 1960s. Hundreds of brownstones were rehabilitated. Large numbers of dilapidated old tenements were cleared of their tenants, were demolished and new high rise buildings were built in their place. In fact Stage I of the Area progressed rapidly and Stage II was well under way by the end of the decade.

Evidence of upgrading in accordance with the terms of the Plan was evident throughout the Area and constituted the basis for the enthusiastic participation in the Plan by the various sponsors. Although the Plan was not progressing as rapidly as originally anticipated, there was enough evidence of tangible progress to assure persons interested in coming into the Area to do so and many, in reliance upon what they saw, made the necessary commitment.

This factor too is established by plaintiffs' testimony and is uncontroverted by any of defendants' testimony.

5. CHANGES OCCURRED IN THE SPRING OF 1970 WHICH CONTINUE AND THE CITY IS CURRENTLY VIOLATING ITS COMMITMENTS BY ALLOWING THE NUMBER OF LOW INCOME FAMILIES TO EXCEED 2500 AND BY ITS FAILURE TO COMPLETE THE PLAN

In the spring of 1970 a group of squatters, (as part of an organized movement under the leadership of William Price for Operation Move-In (OMI) and El Comité supported by Strykers Bay (1320-1321, 1819-1820)) moved into vacant apartments in a number of old tenement buildings which were slated for demolition and which had been recently vacated by the prior site occupants who were relocated by the City. The City failed to take action to remove them from their illegal occupancy and in fact gave them rental agreements permitting them to stay on. ( ) There has been a rapid turnover in these tenancies with constant move-outs and move-ins. The living conditions in these apartments are deplorable and they are not fit for human habitation.( ) However to this day, more than four years after their illegal takeover, there are 274 squatter families living in the Area. (Letter of the Corporation Counsel to the Court dated May 28, 1974 p2) These families are all low income and a large number of them are on welfare. They constitute a disruptive element to the entire neighborhood.

The act of the City in permitting these squatters to remain on the site is in violation of the City's commitment to the sponsors under the terms of the Plan because they not only constitute a disruptive element in the community but

their occupancy of buildings which should be demolished to make way for new buildings, as called for in the Plan, serves to delay the progress and completion of the Plan.

In addition the City and Strykers Bay have tenanted the 70% middle income portions of Leader House, Westwood House and Columbus Manor with welfare families so that the buildings have ended up with 40% middle income and 60% low income families. (1429-1439, 2018-2022) This is concededly in violation of the City's commitments as evidenced by the letter of the HDA Administrator Andrew Kerr of January 8th 1973 (Plaintiffs' Exhibit 54) who characterized these occupancies as in violation of the City's commitment.

Moreover, the balance of these three buildings are occupied by Section 236 subsidized tenants whose income limits are approximately the same as current public housing limits and are suitable only for what is the equivalent of low income occupancy. There are a total of approximately 600 Section 236 tenants in these buildings.

Thus, when we add the 274 squatter families and the 600 Section 236 tenants in these three buildings to the low income units already built in the seven public housing projects totaling 1312 low income units plus the 276 units of rehabilitated public housing and the 853 units of low income housing in the middle income buildings we have a grand

total of over 3300 low income families presently in occupancy. (Defendants' Exhibit S) (Plaintiffs' Exhibit 45)

This is clearly in violation of the 2500 units the City committed itself to create when the project is finished.

The City has also failed to proceed with the completion of the Plan four years after the 1970 date which was the estimated completion date. (1290-1291, Plaintiffs' Exhibit 14 p28 Par 11 which states that the Plan will be completed in 8 years from the date of execution, July 1962)

These figures must be viewed within the framework of the change in the processing requirements for public housing tenants where the prior careful screening engaged in by the Housing Authority has been eliminated and it is much more possible for multi-problem families to be admitted into public housing projects. (230-232, 779-786, 3814, 3815)

It is significant that whereas the City is requiring 30% low income units in the new middle income buildings in the Area it is requiring less than 7% low income units in the Waterside project. (3061-3062)

The factors described in this subdivision are established by the testimony of plaintiffs' witnesses and are largely confirmed by the evidence adduced by the City or in any event are not controverted by any evidence adduced by the defendants.

6. <u>THE CITY WILL VIOLATE ITS UNDERTAKING IF IT COMPLETES THE PLAN AS IS PRESENTLY CONTEMPLATED.</u>

If the City completes the Plan as presently contemplated it will eliminate the 274 squatter families presently on the site and will add 136 low income units presently in construction plus 539 units of low income to be included in the new middle income buildings to be constructed, along with Sites 4 and 30 as public housing, making a net difference of 401 additional units which when added to the 3300 units presently on the site will make a total of 4130 units of low income housing over and above any new low income housing that results from using Section 236 (or the new Federal Section 23 leasing program) which might be used in the 6 new buildings to be constructed by the State and the 2 new buildings to be completed by the City. (Defendants' Exhibit S, Plaintiffs' Exhibit 45)

In excess of 3700 units clearly violates the City's commitment of 2500 units of low income housing.

The facts set forth in this subdivision are taken largely from the Exhibits furnished by the defendant City on the trial.

7. THE CHANGE IN THE PLAN INVOLVED IN THE CONVERSION OF SITES 4 and 30 FROM MIDDLE TO LOW INCOME HOUSING INVOLVES A MAJOR CHANGE IN THE PLAN AND WAS REQUIRED TO BE PROCESSED AS SUCH AND APPROVED BY VARIOUS GOVERNMENTAL AGENCIES AND THE FAILURE TO DO SO VIOLATED THE PLAN.

A change of the nature of the use in an Urban Renewal Plan is a major change requiring a formal plan change which must be processed and approved by the Housing and Development Administration, the State Commissioner of Housing and Community

Renewal, the Federal Government, the City Planning Commission and the Board of Estimate.

No formal plan change was effectuated by the City in connection with the conversion of Sites 4 and 30 from middle to low income housing. What the City did do was to process for approval of a "plan and project" under Section 150 of the New York Public Housing Law which is a different procedure for a different purpose than the procedure for a formal plan change of the Urban Renewal Plan. A formal plan change is governed by Article 15 of the New York General Municipal Law with particular reference to Sections 505 and 514 and the National Housing Act of 1949 Sections 105 (a) and (d).

The procedure set forth in Public Housing Law Section 150 (which was followed by the City here) deals with the approval necessary for the development of a public housing project whether it be in an Urban Renewal Area or not. The procedure prescribed by General Municipal Law Article 15 and the National Housing Act of 1949 Sections 105(a) and (d) deals with changes in an urban renewal plan, which is what we are concerned with in this case and which was not followed by the City in connection with the change in the Plan of Sites 4 and 30 from middle to low income housing.

The procedure which was followed by the City here involved obtaining approval of a "plan and project" for public housing by the City Planning Commission and the Board of Estimate

after public hearings in accordance with Public Housing Law Section 150. However, the procedure for dealing with a plan change (whether "major" or"minor") under an urban renewal plan, although it also requires approval of the City Planning Commission and the Board of Estimate, requires much more. The procedures for obtaining a plan change are annexed to Defendants' Exhibit B under subdivision i. Memorandum from HUD (Legal) to Mr. Maylott (Area Director) subject: Plan Change for Site 30...." as an exhibit to the memorandum and reads as follows:

"NEW YORK STATE
LOCAL APPROVALS FOR URBAN RENEWAL PLAN CHANGES;
SECTION 505, ARTICLE 15, NEW YORK GENERAL MUNICIPAL LAW

I. MINOR PLAN CHANGE
After receipt of a proposed plan change that is deemed to be minor, the LPA should be advised that, to facilitate DHUD review, they must submit the following documentation:

1. Evidence of Approval from the New York State Division of Housing and Community Renewal pursuant to New York General Municipal Law, Section 514.

2. An opinion of Counsel on the plan change.

3. Evidence of Consent to the plan change from any affected redevelopers. (Such evidence may take the form of either Statements of Consent from affected redevelopers or a statement in the opinion of Counsel to the effect that such consents have been obtained or, if they are not to be obtained, the reasons).

4. A certified copy of resolution of the LPA adopting the plan change.

5. A certified copy of resolution of the Local Governing Body of the locality approving the plan change.

6. Evidence of the approval of the change from the locality's Planning Commission or Board; it is preferred that this take the form of a resolution. The LPA (Local Public Agency) should also be advised to take care that it follow the procedures outlined in the Urban Plan (Section 'F') in adopting the Plan Change.

II. MAJOR PLAN CHANGE

All of the foregoing, plus necessary public hearings of planning, commission and local governing body of the locality, together with affidavits of Publication of Notice of each such hearing along with certified minutes of respective hearings."

The City failed to follow the procedure applicable to either a minor or a major plan change and the Federal Government requested an explanation from the City. The Corporation Counsel in response wrote the letter dated November 2, 1972 which is likewise annexed to Defendants' Exhibit B as "h. Letter from Mr. Redlich to Mr. Walsh (HDA) indicating proper procedure followed in changing Site 30 to low income site....".

That letter proceeds upon a misrepresentation of the nature of the change involved. It treats the hearings and approvals of the City Planning Commission and the Board of Estimate as if they were all that was involved and disregards the fact that a plan change was required. The letter itself in next to the last paragraph admits that the Board's Resolution of November 11, 1971 did not refer to "amendment of the urban renewal plan" but attempts to explain away the omission on the ground that it was merely a matter of form without legal significance". The exact language is as follows:

> "What may have prompted the HUD inquiry is the fact that the Board's resolution of November 11, 1971 did not specifically refer to amendment of the urban renewal plan. That omission, however, would appear to be merely a matter of form without legal significance. As indicated above, both the Board and the interested public had full advance notice that the proposal before the Board involved conversion of a designated site in the urban renewal area from middle income housing to low income public housing."

The quoted conclusion is in error. It is not a matter of "form" but is instead a matter of real "substance".

The procedure followed by the City might have been appropriate if the sites in question were not in an urban renewal area, but the fact is they are. The Plan called for a reuse of the sites as middle income housing and the proposal was for a change in the urban renewal plan to provide for reuse as low income public housing projects. As we have seen after weeks of trial the change is a profound one which, combined with the other violations of the Plan by the defendants, is having the effect of emasculating the entire Plan and destroying the investment running into hundreds of millions of dollars of public and private funds.

The memorandum of HUD (legal) to Mr. Maylott (Defendants' Exhibit B, item "i") dated December 14, 1972 compounds the error in the City's letter by repeating the conclusions arrived at in the City's letter and disregarding the provisions of its own "attached sheet" (which we have quoted above) setting forth the procedure to be followed in

effectuating a plan change irrespective of whether the change is "minor" or "major".

For example:-

(a) There is no evidence of approval from the New York State Division of Housing and Community Renewal pursuant to General Municipal Law Article 15 Section 514;

(b) There is no evidence of consent to the plan change from any affected redevelopers, i.e., Karlen and the other redevelopers in the Pilot Project Area whose written consent was required (see argument in item "8" following);

(c) There is no certified copy of a resolution of the HDA adopting the plan change;

(d) There is no certified copy of a Resolution of the Board of Estimate approving the plan change.

(e) The change was not processed through the Federal Department of Housing and Urban Development for approval as a plan change as distinguished from approval of a public housing project.

The memorandum from HUD (legal) to Mr. Maylott (Defendants' Exhibit B item "i") characterizes the change in the Plan as being "minor".

Aside from the fact that it is immaterial whether the change is "minor" or "major" since as we have demonstrated above, the City has not complied with the requirements for a plan change at all, whether "minor" or "major", it is clear as a matter of fact that the change of Sites 4 and 30 from

middle income housing as designated in the Plan to low income public housing in the plan change, is a significant and important change. In addition, however, the City itself has so interpreted this type of change as being "major" in the four plan changes which were processed between 1963 and 1966 (Plaintiffs' Exhibits 11, 15, 16, 17, 18, 19, 20, 34) and Starr and Fried, both experts on urban renewal processing, characterized the situation as calling for a major plan change. (425, 937)

To characterize as "minor" a change as radical as the change from middle to low income public housing of Sites 4 and 30 is indeed to distort the meaning of the word "minor".

The record establishes the tensions and antagonisms developed in the Area as a result of the change. The Area under the original concept calling for 2500 units of low income housing was already stretched almost to the breaking point. When contrasted with the number of low income units in the Waterside project which was testified to be about 7% (but actually is less than 3%) the City was really loading the Area with low income families. Then, as the straw that broke the camel's back, to add the 430 units of low income housing on Sites 4 and 30 to an already overburdened number of low income units (3300 as we have shown above) was giving rise to a situation that was tipping the Area so that it would end up as a segregated slum.

This significant change can scarcely be called "minor". But, more importantly, the City itself has already

determined that the nature of the Plan change is "major" in the manner in which it has dealt with earlier changes of the same nature where it has deemed them to require major changes in the Plan.

The First Amendment to the Plan (Plaintiffs' Exhibit 11, 34) dealt with a plan change that involved 36 buildings which had been slated for conventional rehabilitation to be changed to rehabilitation by the Housing Authority as public housing. This is the same kind of change from middle income (conventional) rehabilitations to low income rehabilitations as the change of Sites 4 and 30 from middle income new housing to low income new housing. The City went through the entire procedure for a full and formal major plan change amendment.

The Second Amendment to the Plan (Plaintiffs' Exhibits 15, 16 and 18) dealt with the change of Sites 12, 13 and 14 formerly approved for fully tax paying housing to be developed as partially tax exempt housing and Site 36 which was approved as fully tax paying to be built as public housing. Again the same kind of change as Sites 4 and 30 only the change was made from luxury to middle income in 3 instances and in one instance to low income housing. Again the City went through a full formal major plan change amendment.

The Third Amendment (Plaintiffs' Exhibit 17) involved a change in a portion of Site 23 that was originally designated for redevelopment to be designated for rehabilitation and a change in the width of the pavements and sidewalks on West

94th and 95th Streets, as well as a change in rooms, floor area and open space for various parcels. Again the City went through a full formal major plan change procedure.

The Fourth Amendment (Plaintiffs' Exhibit 19 and 20) involved a change in Sites 5 and10 formerly approved for fully tax paying housing to be changed to partially tax-exempt housing at moderate rentals; a change in Site 36 formerly approved for public housing to be changed to partially tax-exempt housing at moderate rentals; Site 18 and 37 formerly approved for clearance and redevelopment to be changed to rehabilitation; Site 24 (the Trinity Site) to be changed to combined residential and school use; and a number of other changes in permissible uses and parking controls. These changes, too, were processed as a full formal major plan change.

It was no accident that these four formal major plan changes were processed as they were - the law required it. But with the changed attitude of the City Administration toward the Plan beginning in 1970 they disregarded the requirements of law and failed to process the changes in Sites 4 and 30 (as required and as they had done previously) and failed completely to take any of the steps prescribed for a Plan change.

In this connection it is interesting to analyze the decision of the New York Court of Appeals in Margulis v. Lindsay, 31 N.Y.2d 168 which involved the Forest Hills Public Housing Project. Although it did not involve an urban renewal plan it did

concern the problem of the need for a plan change for a project approved under PHL Section 150. The Court held, with one Judge dissenting, that no plan change was needed because the only change was in the height and distribution of the buildings and no change in use was involved. The Court stated that the use for public housing had been previously approved, implying that if the nature of the residential use had changed a plan change would have been required. The Court stated:-

> "The real issue, as suggested earlier, is the impact on the community of so vast a public housing project, aggregating over 800 units to be occupied by low-income people, threatening to impair the middle class 'life-style' and security of the surrounding area; but that was always so, even when the 'smaller' version was projected with its high-rise buildings.... But this real issue is one that has been foreclosed by the prior approval by the Board of Estimate, and plaintiffs do not question that."
>
> "A possible essential issue might have been the number and quality of the tenant population planned for the project, but for the reasons already indicated that essential aspect of the project was approved and has not been materially changed."
> (cf Tinsley v. Monserrat 26 N.Y.2d 110, 308 N.Y.S.2d 843 (1970); Cauyahoga Metropolitan Housing Authority v. Harmody 474 F. 2d 1102 (6th Cir. 1973)

Thus, considered from every angle the change in Sites 4 and 30 from middle to low income housing was a major change which requires a formal plan change and even if the change is deemed to be a minor one the appropriate plan change is likewise

required.

No such plan change was ever processed by the City and the Plan therefore has been violated.

No issue as to the facts involved in this item has been raised by the defendants and its resolution rests entirely upon the interpretation placed upon the documents and the governing law.

8. THE PLAN REQUIRES THE WRITTEN CONSENT BY OWNERS OR LESSEES IN THEIPILOT PROJECT AREA TO ANY CHANGES IN THE PLAN WHICH AFFECT THEIR PROPERTY AND SUCH CONSENT WAS NOT GIVEN

Tied in directly with the procedures for plan changes discussed in Item 7 above are the procedures for consent by owners and lessees to plan changes.

When the Final Urban Renewal Plan (Plantiffs' Exhibit 22) was approved in 1962 it contained a provision requiring consent to any plan changes by owners and lessees under the Plan. The clause then in effect provided as follows:

> "F. Changes in Approved Plan
>
> This Urban Renewal Plan may be modified at any time by the City of New York provided that, if modified prior to the termination of the Government's financial obligation under the Capital Grant Contract, such modification be concurred in by the Housing and Home Finance Agency, and provided that if any such modification affects any real property previously disposed of by the City of New York, written consent to such modification must be obtained from the purchaser or lessee of such real property." (emphasis added.)

The rationale for this provision was that a sponsor who acquired property under the terms of an approved urban

renewal plan was entitled to pass on changes which would affect his sponsorship. Thus, a sponsor of a fine residential property was entitled to a veto over the idea of changing the plan to substitute a glue factory for a park across the street from his property.

However, laudable as was its purpose, the clause gave rise to difficult problems when plan changes were needed and consent proved difficult to obtain. As a result the clause quoted above was modified to the form presently in the latest amendment to the plan which only requires the consent of the owner whose parcel is involved in the change. The current clause contained in Plaintiffs' Exhibit 14 at page 28 of Schedule C-1 Amended Urban Renewal Plan (Fourth Revision) which provides as follows:

> "F. Changes in Approved Plan
>
> This Urban Renewal Plan may be modified at any time by the City of New York, provided that if modified after the disposition of any land in the project area such modification must be consented to in writing, by the purchaser or lessee or their successors in interest of the specific property covered by the modification. This shall not be construed to require the consent of thepurchaser or lessee or their successors in interest of any other parcel in the project area."

But in making this change in the consent procedure the clause requiring the written consent from owners in the Pilot Project Area was retained as provided in the original final urban renewal plan and remains effective to this day. It is contained in Plaintiffs' Exhibit 14 at page 17 of Exhibit D,

"Final Plan for the Rehabilitation Demonstration Pilot Project" and provides as follows:

> "R. Changes in Approved Plan
>
> This Final Plan may be modified at any time by the City of New York, provided that if any such modification affects any real property previously disposed of by the City in the Pilot Project area, written consent to such modification must be obtained from the purchaser or lessee of such real property."

Thus, for any change in the Plan which affects owners or lessees in the Pilot Project Area written consent is required. We have established in Item 7 above that the change of Sites 4 and 30 from middle to low income housing is a change in the Plan which requires the processing of a plan change as defined by law. Consequently, the written consent under the quoted clause of all owners and lessees in the Pilot Project Area whose property is affected is required.

The boundaries of the Pilot Project Area are clearly defined in the Pilot Project Plan in Exhibit A annexed to the Pilot Project Plan annexed to Plaintiffs' Exhibit 14 and includes the brownstones on 94th Street owned by plaintiffs-intervenors Karlen and Hudgins whose properties are located at 34 West 94th Street and 27 and 29 West 94th Street respectively. (See also the map showing the boundaries of the Pilot Project Area, Plaintiffs' Exhibit 14. Exhibit D Final Plan Map Number 5)

The change of Sites 4 and 30 from a middle to a low income use affects the real property of all owners and lessees

in the Pilot Project Area and the City admits that no written consent was obtained from any of them (3201). In any event, defendants do not contend that any such consent was ever given even though the change in the Plan required their written consent. (3201)

The plaintiff-intervenor Karlen who purchased a brownstone from the City in the Pilot Project Area (34 West 94th Street) in 1968, testified that he was adversely affected by the change in use of Sites 4 and 30 since that resulted in the tension which developed in the Area and its deterioration. His property also suffered a loss in value, there was an increase in fear and a depreciation in environmental quality. (71-133, 2614-2628, Karlen affidavit sworn to 12 day of July 1973 in support of his motion for leave to intervene at pp. 6-9, marked in evidence (675)).

Thus, it is apparent that the City has violated the Plan in that it has failed to obtain the written consent of the owners and lessees in the Pilot Project Area who are affected by the change of Sites 4 and 30 from middle to low income housing.

9. THE AREA IS PRESENTLY DETERIORATING AND HAS BEEN SINCE THE SPRING OF 1970.

The record is replete with testimony of the deterioration of the Area since the advent of the squatters in the Spring of 1970. We have digested the testimony of plaintiffs' witnesses (Exhibit B annexed hereto) who testified to the facts regarding this deterioration and it will not be repeated herein. The witnesses who so testified are: Karlen (71-133, 2614-2628); Fine (133-170, 1285-1371, 1480-1548); Hudgins (1169-1285); Bromberg (1376-1477, 1549-1641); Garcia (1642-1663, 1673-1680); Liebert (1784-1989, 2038-2045; Olnek (1994-2027, 2045-2128); Roth (2242-2253); Sifonte (1666-1673, 2257-2295); Sours (2304-2334, 2357-2399); Friedberg (2400-2460, 2755-2796); Owens (2553-2613); Gratz (2971-3076)

In summary, this testimony may be categorized into the following general areas:

(a) Crime in the form of dope trafficking, muggings, attempted rape, assaults, murder, prostitution, burglary, robbery. (90, 91, 100, 1310, 1028-1029, 1217-1220, 1448-1452, 1652, 1655, 1850-1852, 2059-2063, 2120, 2257-2266, 2271-2272, 2318-2320, 2324-2325, 3007, 3012-3013)

(b) Juvenile delinquency and destruction of property. (88)

(c) Graffiti inside halls and stairs and on the exterior of buildings. (94, 114, 129-130, 1223, 1440, 1444-1448, 1647-1648, 1702, 2058, 2282-2283)

(d) Congregating and loitering in front of buildings. (1217, 1440-1444, 1457-1460, 2273-2274)

(e) Noise from parties, fights, firecrackers, bugles, tamborines, bongo drums, shouting and yelling, loud playing of radios, TV and hi-fi equipment all going on until the early hours of the morning. (1653, 1654, 1656, 1657, 1658, 1850-1852, 1854, 2248, 2267-2270, 2327-2329, 2436-2445)

(f) Drinking of beer, wine and liquor and a prevalence of derelicts and drunks. (101, 1222, 2267-2270, 2326)

(g) Breaking glass, throwing rocks, bottles and firecrackers, shooting bee bee guns, breaking windows. (88, 1314, 1318-1319, 2324-2325)

(h) Garbage strewn about the streets, accumulating in buildings, thrown out of windows, garbage receptacles dumped into the streets, urine and feces

in halls. (1311-1317, 1546, 1440-1444, 1648, 1649, 1651, 1830-1831, 1854, 2058, 2248-2250, 2275, 2287, 2318-2320)

(i) Illegally turning on water hydrants and shooting water at passing cars. (1850-1852, 1854, 2330, 2558)

(j) Calling vile epithets and obscene language at passers-by, threatening language and accosting people on the street. (2321-2322, 3012-3015)

(k) Starting fires. (1314-1318, 1661, 1832, 2559-2561, 3012-3013)

(l) Vandalism in schools, garages and buildings. (1311, 1656-1657, 1659-1660, 1662-1663, 1702-1709, 2250, 2606-2608, 3008-3009)

(m) Dope addiction. (1222, 2267-2270, 2326, 2559-2561)

(n) Fear of the neighborhood. (1311, 1820-1823, 2136-2138, 3119)

(o) Infestation of rats, mice, roaches and other vermin. (1314-1317, 1541-1542, 1649, 1650, 2278-2282, 2316-2317)

(p) Creation of neighborhood tensions. (1823-1825, 1828, 1829, 1910-1915, 2380, 2428-2435, 2445-2446, 2986, 3000-3002, 3018-3021)

(q) Throwing articles and material off terraces. (1453-1456 Plaintiffs' Exhibit 42)

(r) Squatters taking over vacated buildings (1306-1310, 1819, 1820, 1826-1827, 2318-2320, 2428-2431, 2591-2592, 2993, 3007)

(s) Illegal car repairs on street. (1830-1831)

(t) Necessity to hire guards on streets (1847-1852)

(u) Stripping cars. (2558-2561)

(v) Education in the public schools very bad. (2606-2608)

In summary, the record is overwhelming in establishing the deterioration of the Area.

The defendants did produce witnesses who testified that the Area was not deteriorating and that it was a safe Area. These witnesses, however, were largely employees of facilities in the Area or had some other vested interest in contending that the Area was not deteriorating. Their testimony, when

weighed against the overwhelming testimony of plaintiffs' witnesses, is inherently incredible.

Mrs. Matlaw (3252-3279) is a teacher-coordinator at P. S. 84, 32 West 92nd Street. She testified that there has been a change in the nature, and an increase in the number of problems in her neighborhood (3274). Her testimony must be viewed within the framework of her employment at P. S. 84 as an administrator who does some teaching and who, because of her employment has an interest in the preservation of the reputation of her school and her neighborhood. Consequently her statements about the conditions in the Area must be discounted, particularly when viewed against the testimony to the contrary of Hudgins and Karlen who live on the same block and who testified to its deterioration at the present time.

Mr. Goodman (3128-3151) is the owner of a brownstone at 153 West 81st Street. His glowing description of the Area is negated by the fact that he plans on leaving the Area and moving into another brownstone he purchased at 128 West 80th Street (3146-3147). His favorable statements about the Area may well be motivated by the necessity for keeping his tenant who pays $600 per month rent (3129) and his desire to maintain the value of the brownstone he owns in the Area which he may

well contemplate selling.

Mr. Wohl (3213-3250a) is executive director at the Goddard Riverside Community Center and as such has a vested interest in establishing that the neighborhood is solid and stable. His center is also closely affiliated with Strykers Bay (3223) and has an interest in supporting its position and activities. He also is, no doubt, concerned about maintaining the substantial funding of the Center ($900,000 per annum) through its federal, state, city and private sources (3222-3223) and is anxious to maintain the position that the neighborhood is healthy so that the sources of funding are not impaired. However, he does admit that there is some degree of conflict in the Area (3228) and that senior citizens do entertain fears as to crime (3250).

Mr. Morrison (3384-3404) is principal of P. S. 84 and testified that, although the school population is almost 70% black and Hispanic (3388), it has no special problems. He did not testify as to the Area. His prejudice in favor of showing his school in the most favorable light was obvious.

Mrs. Elaine Schwartz (3405-3442) lives in a brownstone in the Pilot Project Area and works on a federally funded project at Fordham University for Teaching Teacher Trainers

which covers Community School District 3 which is a heavily funded area. Her daughter aged 14 attends Calhoun, a private school because they did not want her to go to Joan of Arc which is in the Area and 90% black and Puerto Rican. (3441-3442) She too has a vested interest in painting the Area as desirable.

Mrs. Jorgensen (3467-3481) lives in a brownstone on West 98th Street. She teaches English to adults at St. Gregory's Church (3468) (Father Farrelly of Strykers Bay's Church). She admits that she saw a man knocking over some garbage cans (3469-3470), has experienced unpleasant or taunting remarks while walking on the street and on occasion has had her sleep interfered with by noise.

Mrs. Hess (3560-3584) is presently employed as a teacher at Joan of Arc Mini School. She would have great trepidation about sending her children to Joan of Arc (3580) which, she stated, is 99% black and Hispanic and 1% other and 98% poor and 1% or 2% middle class. She thinks the school is safer than several years ago but there is still a great deal of hostility.

Mrs. Lawrence (3585-3591) is chairman of the Co-operator's Association of St. Martin's Tower. She knows of

one mugging in the building, one mugging on the street directly in front of the building and the theft of a child's wallet by other children (3590).

Mr. Schwartz, (3613-3621) husband of Mrs. Elaine Schwartz, was a member of Planning Board 7 which covers the Area (3614) and of the Homeowners and Residents Alliance which feels that the Area should have more public housing and is a member of Strykers Bay (3716-3718). His orientation is clearly for more low income people in the Area.

Mr. Justinano (3734-3753) is a Puerto Rican former slum dweller and has a totally different frame of reference within which to view conditions in the Area. He is obviously an upwardly mobile person who has come up from the slums and who appreciates the opportunity to live in a new building.

In weighing the above testimony the Court, as the trier of the fact must evaluate the interest and predilections of the witnesses giving conflicting testimony. In doing so it will appear that the plaintiffs' witnesses are more worthy of belief and that the neighborhood has been deteriorating since 1970.

10. AS A RESULT OF THESE VIOLATIONS THE AREA IS AT OR HAS EXCEEDED THE TIPPING POINT AND WILL DETERIORATE EVENTUALLY INTO A SLUM

As a consequence of the violations of the Plan by defendants, it is plaintiffs' contention that the Area has reached or exceeded the tipping point and unless the process is reversed the Area will continue to deteriorate until it eventually becomes a segregated slum as has happened in many other parts of the City.

The concept of "tipping point" has been recognized in federal law by the holding in this Circuit of the Court of Appeals in Otero v. New York City Housing Authority, 484 Fed.2d 1122 (1973) on September 12, 1973, shortly before the trial of this case commenced.

In Otero the Court of Appeals held tipping point to be a factor which justified it in ordering the Housing Authority to reject certain racial minorities in the Seward Park Extension Urban Renewal Project for admission to housing where to do so would have created racial imbalance that would eventually have tipped the area, leading to eventual segregation.

This concept, as now recognized by the courts of

this jurisdiction, is equally applicable to the issues in this case.

As we have shown the Plan contemplated the development of the Area as an integrated community by the infusion of 2500 units of low income housing into a total number of units for the entire Area of approximately 15,500 units of newly constructed, rehabilitated and conserved housing. This 2500 units marked a substantial increase in the 400 units originally planned and represented an effort to accommodate as large a number of low income units as the Area could reasonably absorb without running the risk of tipping. This was done in order to take care of as many relocatees, most of whom were low income families, as possible.

The pressure by certain groups and politicians for an increase in the 2500 number of low income units, combined with the advent of the squatters, resulted in the violation of the Plan of which plaintiffs complain. This has resulted in the creation already of over 3300 units with the prospect of over 3140 units being included eventually if the Plan is completed as presently contemplated. This increase, we submit and the testimony has shown, will result in the Area tipping.

The increase in number of low income tenants is synonymous with an increase in the number of non-white tenants. This conclusion may be drawn from findings of the National Commission on Urban Problems which show that more than 50% of the residents of many of our central cities are non-white and that a large majority of these persons have low incomes. (Rebuilding the American City, at 43 (Praeger, 1969). Furthermore, it has been established that New York City has a large net in-migration of Puerto Ricans and blacks each year, while substantially equal numbers of whites are leaving in "panic flight." The new immigrants are from agrarian societies of Puerto Rico and the rural south, with only marginal incomes.

The increase in number of low income tenants cannot, per se, be said to be detrimental to the area by virtue of the race of the tenants involved. It can, however, be said to be detrimental to the cause of racial integration; a cause to which society and the Plan are committed.

It has been shown that once communities become heavily occupied by non-whites, whites are quick to depart. This is a fact established by sociologists through surveys and studies. One such study was made by Duncan and Duncan

(The Negro Population of Chicago, A Study of Residential Succession (U. of Chicago 1957)), and is generally accepted. (See Karl and Alma Taeuber, Negroes in Cities, at 100 (Atheneum 1969). Similarly, sociologists Piven and Howard observed the trend in housing projects originally aimed at promoting integration, and noted, "It is found that when large numbers of tenants are Negro, low income whites depart projects or are reluctant to apply. Projects thus tend to become high-risk brick ghettos rather than outposts of integrated living." (The Case Against Urban Desegregation, 12 Social Work 12, 14 (1967)). The National Advisory Commission on Civil Disorders (Bantam 1968) (hereinafter "Kerner Commission") observed that a major cause of segregation was housing discrimination. It noted at 244: "Another form of discrimination just as significant is white withdrawal from, or refusal to enter, neighborhoods where large numbers of Negroes are moving or already residing." Whites were found to refuse to enter areas of high concentrations of non-whites and as vacancies arose they were filled only by non-whites. The Commission recognized the existence of a self-fulfilling prophecy as a bar to racially integrated communities; people believed that a neighborhood would become segregated, therefore, they left, and the neighborhood became so.

Underlying this prophecy, and the "panic flight" mentioned above, is a sociological phenomenon known as the "tipping point." Once the proportions of non-whites exceeds the limits of a neighborhood's tolerance for interracial living, the white population begins to depart. The proportion of racial integration varies from neighborhood to neighborhood, however, once the "tipping point" is exceeded it is usually irreversible. (See M. Grodzins, The Metropolitan Area as a Racial Problem (U. of Pittsburgh, 1958 (hereinafter "Grodzins")). The "tipping point" concept, indicates widespread racial bias which operates to the detriment of the creation of integrated communities. The consequence of the eventual ethnic transition is often "piling up" and overcrowded conditions and since the populace is generally poor, a concomitant deterioration of the neighborhood follows (Grodzins at 5, 6).

The "tipping point" must be acknowledged and dealt with if racial integration is to be achieved. Community groups have used "tipping" to build interracial communities -- their results have been successful but only by maintaining a fixed ethnic mix. By limiting the number of low income units to a specific ratio the area planners would have provided

a basis for truly integrated living. The Plan would resemble one advocated by Grodzins, supra, that is, attract whites to the city via renewed and racially controlled housing (Grodzins at 15). However, by increasing, on an uncontrolled basis, the percentage of low income tenants, the "tipping point" is gradually reached and then surpassed. It must follow that the area will go the way of many other renewal projects and become still another residential ghetto.

Predictably, where an area has a concentration of low income residents from rural backgrounds altogether unprepared for urban apartment living, deterioration will follow. Such deterioration may come about by overcrowding and the problems it brings. Grodzins, supra, points out residential attributes of lower income persons, without regard to race. "The neighborhoods . . . eventually spiral downward. Disease and crime rates are high. Family stability is further prejudiced. Filth accumulates. The slum spreads outwards." (Grodzins at 10). Similarly, the Kerner Commission (at 262-63) described the culture of poverty which creates an environmental jungle characterized by personal insecurity and tension. High rates of illegitimacy and narcotics addiction are seen as typical of

low income areas. Also, rates of juvenile delinquency, venereal disease and dependency upon public assistance are extremely high in disadvantaged areas. Low levels of sanitation breed rats and vermin and otherwise contaminate the environment.

Crime statistics presented by the Kerner Commission (based on a survey of 5 Chicago police districts) reveal a drastic variance between middle and low income communities. The Commission was able to conclude, after considering all the districts surveyed, that "the lower the income in an area, the higher the crime rate there." (Kerner Commission at 267).

The components of decay which we have described are all too typical of the nation's central cities. The planners of the Area by engaging in social engineering hoped to combat them by the creation of an economically and socially integrated community and made a heavy investment of money and effort to achieve that goal. The decision to change the Plan by the defendants and permit large parts of the Area to become low income housing will inevitably deal a death blow to the aspirations of the original planners and indeed, to like minded, public spirited citizens everywhere.

Thus, unless the present policies of defendants of departing from the Plan are reversed, the process of decay

and deterioration presently at work in the Area, will lead to a deprivation of the rights of plaintiffs and the large numbers of sponsors, owners, tenants and cooperators who, relying upon the Plan, made substantial investments and moved into or remained in the Area.

The Circuit Court of Appeals in Otero gave sanction to these principles and they are now law in this jurisdiction.

In Otero the Court is saying that where the action of a public body (in that case the Housing Authority; in this case the defendants), even, if, in pursuance of its own regulations, is to take steps which will lead eventually to the segregation of an area in violation of the 1968 Fair Housing Act 42 U.S.C. Sec. 3601 et seq. it is acting illegally. So in the instant case by increasing the number of low income families beyond the agreed upon 2500 units it is creating a situation where the "tipping point" will be exceeded and, under Otero, that may not be done.

> "The 'tipping point' or percentage of concentration of non-white residents in a given area that will cause white residents to flee, played a major role in Gautreaux v. Chicago Housing Authority, supra. It has been recognized by others.
>
> 'This gradual tendency of integrated areas to become more and more Negro is

> accentuated by the popular belief--often transmitted into action--that the rate at which white families move out rises with the percentage of Negroes in the area, and more important, that there exists a 'tipping point'--a given percentage of Negroes, after which the departure of whites from the areas will be greatly accelerated.' Kaplan, Equal Justice in an Unequal World--The Problem of Special Treatment, 61 Nw.U.L.Rev.388 at 390 (1966).
>
> 'Tenancy in low income housing units tends to take on the racial character of the areas in which they are located. . . . Location of low income housing in a racially-mixed area, for example, while perhaps the most promising use of site selection for integrative purposes, must seek to minimize the market reaction to a new infusion of low income blacks. For if carelessly done, or even if a careful attempt is miscalculated, the large number of low income blacks potentially attracted to the housing may 'tip' the racial balance of a mixed area and cause white residents to move out.' 85 Harv.L.Rev. 870 at 875-76 (1972)." 484 F.2d 1122, 1135

In our case as in Otero there is, in addition to creating a tipping situation in the entire Area, the further danger of creating a "pocket ghetto". The conversion of Site 30 from middle to low income housing would cause a concentration of three public housing projects on one block (the Trinity block 91sc) with a total of 727 units of low income units over and above the 30% low income units in Trinity's Site 24 of 57 units, the 20 units of low income in Site 31

St. Martin's Towers and the 56 units contemplated for Site 28 Heywood Broun Towers making a total of 860 units on 91 Street or more than an 80% concentration of low income units.

In Otero the Housing Authority argued that a similar "pocket ghetto" would be established and the Court agreed that this should not happen.

> "...It must also show that the segregative effect of compliance with GM 1810 would be impermissible or, more specifically, that it would create a pocket ghetto of the type that would lead to a substantial increase in the overall non-white population in the community, precipitating a trend toward ultimate ghettoization of the entire community." 484 F.2d 1122, 1135
>
> * * * * *
>
> "...Against this background the Authority argues that to allow the Seward Park Extension project to be occupied by 80% non-white families would violate its integration responsibilities, since such a non-white concentration would lead white persons in the immediate vicinity of the project to move away from the newly created "pocket ghetto" in accelerating numbers. In short, since the priority regulation would operate to tip the approximate 50-50 racial balance in the Lower East Side toward a non-white community, the Authority, relying on Banks v. Perk, supra, and Blackshear Residents Organization v. Housing Authority of the City of Austin, supra, contends that it was entitled as a matter of law to disregard its own priority regulation in order to nip in the bud an incipient racial concentration." 484 F.2d 1122, 1136

It is argued by defendants here as in Otero that the relocatees are entitled to low income housing and their rights to this housing is paramount. This argument was rejected by the Court in Otero where it was held that the danger of tipping leading to ultimate segregation (exactly as we have argued in our case) overrides the duty to the relocatees and this is so even though it can be shown that the entire Urban Renewal Area will have a predominance of whites, as has been argued by defendants in our case.

In Otero the contention of the Housing Authority, with which the Court agreed, was as follows:

> "...Defendants rejoin that large concentrations of non-whites in one or more pockets within the community would act as a 'tipping' factor which would precipitate an increase in the non-white population in the surrounding neighborhoods, leading to a steady loss of total white population over a given period of time. It argues that it is under an obligation to prevent the formation of such concentrations or pockets of non-whites rather than limit itself to consideration of the overall current community proportions of white and non-whites." 484 F.2d 1122, 1133

* * * * *

> "...To allow housing officials to make decisions having the long range effect of

A-283

> increasing or maintaining racially segregated housing patterns merely because minority groups will gain an immediate benefit would render such persons willing, and perhaps unwitting, partners in the trend toward ghettoization of our urban centers." 484 F.2d 1122, 1134

The Court in Otero held that "The purpose of racial integration is to benefit the community as a whole not just certain of its members".

Thus, it is clear that the sanction of Otero requires that this Court act to curb the violations of the Plan which will have the effect of creating a segregated slum. The affirmative "duty to integrate" has been declared paramount.

> "We agree with the parties and with the district court that the Authority is under an obligation to act affirmatively to achieve integration in housing. The source of that duty is both constitutional and statutory. Various discriminatory housing practices have been outlawed by judicial decree as violative of the Equal Protection Clause. An authority may not, for instance, select sites for projects which will be occupied by non-whites only in areas already heavily concentrated with a high proportion of non-whites. Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970), noted in 85 Harv. L. Rev. 870 (1972). A tenant assignment policy which assigns persons to a particular project because of the concentration of persons of his own race already residing at the project has been prohibited. Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907,

304 F.Supp. 736 (judgment order)(N.D.Ill. 1969), aff'd., 436 F.2d 306 (7th Cir. 1970), cert. denied, 402 U.S. 922(1971). An authority is barred from using assignment methods which seek to exclude, or have the evident effect of excluding, persons of minority races from residing in predominantly white areas or of restricting non-whites to areas already concentrated by non-white residents. Crow v. Brown, 332 F. Supp. 382 (N.D.Ga. 1971), aff'd., 457 F.2d 788 (5th Cir. 1972). Not only may such practices be enjoined, but affirmative action to erase the effects of past discrimination and desegregate housing patterns may be ordered. See Gautreaux v. Chicago Housing Authority, supra; Gautreaux v. Romney, 448 F.2d 731 (7th Cir. 1971); Crow v. Brown, supra; Fisher v. Parsons-Decaturville Authority, 70 Civ. 1998 (W.D.Tenn. Aug. 19, 1970)(judgment order). See also Kennedy Park Homes Assn. v. City of Lackawanna, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971); Dailey v. City of Lawton, 296 F.Supp. 266 (W.D.Okla. 1969), aff'd., 425 F.2d 1037 (10th Cir. 1970); Heyward v. Public Housing Administration, 238 F.2d 689 (5th Cir. 1956).

An additional source of the affirmative duty to integrate is found in the 1968 Fair Housing Act ("the Act" herein) which provides that [i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States, 42. U.S.C. §3601, and, in §3608, that (d) The Secretary of Housing and Urban Development shall . . . (5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this sub-chapter. It is true that the Act was designed primarily to prohibit discrimination in the sale,

rental, financing, or brokerage of private housing and to provide federal enforcement procedures for remedying such discrimination so that members of minority races would not be condemned to remain in urban ghettos in dense concentrations where employment and educational opportunities were minimal. However, we are satisfied that the affirmative duty placed on the Secretary of HUD by §3608(d)(5) and through him on other agencies administering federally-assisted housing programs also requires that consideration be given to the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built. Action must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat. See, in accord, Shannon v. HUD, 436 F.2d 809 at 820-21 (3d Cir. 1970), noted in 85 Harv.L. Rev. 870 (1972); Banks v. Perk, 341 F.Supp. 1175, 1182 (N.D.Ohio 1972); Blackshear Residents Organization v. Housing Authority of the City of Austin, 347 F.Supp. 1138 (W.D. Tex. 1971). Senator Mondale, who drafted §810(a) of the Act, 42 U.S.C. §3610, pointed out that the proposed law was designed to replace the ghettos by truly integrated and balanced living patterns. 114 Cong. Rec. 3422. 484 F.2d 1122, 1132-1134

The extent to which this "duty to integrate" has been violated hinges on whether the violations of the Plan by the defendants has created a situation where the tipping point has been reached or breached.

A-286

There is at the very least a dispute in the Record as to whether or not this has happened and with that dispute is created the necessity for this Court to intervene and prevent the same violation of law which Otero was aimed at preventing. This factor alone justifies this Court in granting the relief sought by plaintiffs and the fact that there are differing opinions merely serves to underline the seriousness of the problem and the need for action by the Court.

However, aside from the fact that the Court need not determine the question of whether the tipping point has occurred in order to hold for plaintiffs it is submitted that plaintiffs' testimony on tipping is persuasive as against the defendants' testimony which is on the whole conclusory and without substantial support.

The testimony of Roger Starr (184-453) is to the effect that the Area will tip if more than the 2500 units of low income housing are included in it and if Site 30 is changed from middle to low income housing. (300-324, 329-348, 353-368) This is based upon the fact that a commitment was made by the defendants to that effect upon which people relied in staying or coming into the Area and making substantial

investments. A violation of these commitments will cause people to lose confidence, will cause the Area to deteriorate and will eventually tip and become segregated. (220, 230-232, 254-257, 325, 232-236, 260, 251, 357, 426, 263, 264, 301-303) Mr. Starr's testimony withstood extensive cross examination (237-453).

It must be remembered that Mr. Starr was a completely independent, unbiased and unpaid witness who is highly informed as to the situation in the Area and who has spent a lifetime observing housing and urban renewal activities in New York City, with particular reference to the Area. It is also significant that he is now the Housing and Development Administrator for the City of New York, the agency which is the main defendant in this action.

Walter Fried (457-840, 863-964, 2336-2355) was a government official in charge of some aspect of the Plan during the entire period of its development up to the present time--as a Federal official, as a City official with the Housing and Redevelopment Board and later the Housing and Development Administration and now with the Housing Authority. He is probably the best informed public official about the Plan and

the Area that can be found.

He testified that as a result of the change by the defendants in introducing low income units in excess of 2500 as agreed upon and in converting Sites 4 and 30 a situation has developed which has caused the Area to deteriorate and to tip. (554, 555, 570, 547-581, 584-598, 600-604, 608-612, 688-697) He testified that he disagreed with the action of the City in converting Site 30 from middle to low income housing and voted against it although he did not record his dissent. (715-719, 726-733, 949-957) Mr. Fried also withstood several days of cross-examination (616-811).

Dr. Kristof, too, is a public official with a long term connection with the Plan and the Area dating from its inception until the end of 1968 and further contact with it through the Urban Development Corporation up to the present time. (2504-2508) He is impartial since he has no present connection as an official with the Plan itself--thus he too is an informed, impartial and unpaid witness.

He testified (2477-2488, 2504-2665) that the Area is in balance at the tipping point and it depends on what happens from here on in (2538-2539). In answer to the two hypothetical

questions he testified that given the present situation regarding the Area and the proposed future developments of the Area it would tip (2513-2531, 2545-2551, 2644-2654) He likewise presented an extensive analysis of the statistical data upon which he based his conclusions in response to an extensive cross-examination of him. (2520-2682)

Mr. Sulzberger (1682-1784) testified as a real estate expert who has had extensive experience in the ownership and management of property in New York City for over 40 years. He manages 9 large properties in the Area and 15 buildings on the periphery and a total of 50 large buildings on the West Side (1686-1687). His management of government aided housing is the largest in the City. He testified as to his view of what is happening in the Area as a real estate expert familiar with it through the property he owns and manages.

He testified that the Area is deteriorating under present conditions and will continue to do so as long as the Plan is violated which will eventually lead to its tipping as the Bronx has done. (1702-1711) He remained unshaken on cross-examination. (1712-1784)

James William Gaynor (2702-2754, 2769-2833), a paid

witness, was the former Commissioner of Housing and Community Renewal for the State of New York for the period from the inception of the Plan until he retired after 10 years as Commissioner in 1969. He had complete supervision of the Plan for the State during those years. (2702-2721) He made an analysis of the Area and the Plan in order to testify in this case. (2722)

He testified that a change occurred in the Area after he retired in 1969 and that the Area is now deteriorating. (2732-2747) There is now a trend toward a majority of low income families which could result in the project becoming a slum or a ghetto or a deteriorated area which would jeopardize the entire urban renewal project. (2750-2754) He too remained unshaken on cross-examination (2796-2834, 2923-2955).

Defendants introduced witnesses who in contrast testified that the Area would not tip. All of them, however, (except Gans) were or are the officials who directly participated and made the decisions on behalf of defendants as to the direction the Plan is currently taking. In short, these six witnesses had no choice but to testify as they did since they were the ones who made the very decisions which are at issue in

A-291

this case. In effect, they added nothing by coming to testify, since, if they had not, their names were on the determinations to act and their positions were in the public domain.

Mr. Maylott (3077-3127) was the director of the New York Area Office of HUD who approved the plan and project for the development of Site 30 as public housing, (3078, 3092-3111, 3116) and as such does not believe the Area will tip (3112-3114). It is obvious that he could not possibly have said anything different since he went on record, after being informed of the opposition (3092-3096), as approving Site 30 as public housing.

Mr. Green (3282-3385) was the Regional Director for HUD (Mr. Maylott's superior) and he too was officially required to approve the plan and project for Site 30 as low income public housing. Consequently, his testimony that the Area will not tip, (3285, 3286, 3328-3336, 3348) is precisely what would be expected. He testified that he was only basing his opinion on what he knew about the Site 30 situation and that he was not familiar with the rest of the Area. (3342-3348) In doing so he equated the Area with the entire West Side referring particularly to the Lincoln Center area which is totally different and in no way comparable to the Area. (3328-3329)

A-292

Mr. Christian (3808-3822) was the Development Commissioner for the New York City Housing and Development Administration at the time that agency approved the plan and project for the development of Site 30 as public housing and the Executive Director of the New York City Housing Authority (he later became Chairman) at the time Site 4 was approved for public housing. He was the one who initiated both of these projects as low income housing (3808-3809). It is, therefore, not surprising that he would testify that he does not feel that on the tipping issue the balance of the neighborhood would be affected (3809-3810).

Mr. Hazen (3153-3185) was the Commissioner of the Department of Development (Mr. Christian's predecessor) at the time Site 4 was approved by that agency for development as public housing (3155- 3176). He, too, as would be expected, testified that the change in Sites 4 and 30 did not change the concept of the Plan as it relates to tipping point despite the heavy concentration of public housing on 91 Street (3177, 3182, 3183)

Mr. Olinger (3186-3211) was the Deputy Commissioner of Community Development of the Housing and Development

Administration at the time Sites 4 and 30 were changed to public housing (3187, 3190-3191, 3192) and as we would expect he testified that he does not feel that that altered the tipping point (3196). He also testified that the location of over 700 units of low income housing on the 91st Street block did not constitute too great a "concentration".

Mrs. Goodwin (3781-3807) the current New York State Commissioner of Housing and Community Renewal is the official who approved the takeover of six remaining unfinished middle income projects in the Area for funding under the State Mitchell Lama program. She clearly would not have done so if she believed the Area was tipping. Consequently she testified that she did not believe the Area would tip even if there were up to 4000 units of low income housing. (3788-3789, 3798-3801) It should be noted that she only came into contact with the Area in April 1973 (3784) when she became Acting Commissioner and consequently had no knowledge of the fifteen years of background as to what has happened in the Area during most of the period of its development.

In arriving at her conclusion she equated her estimate of the Area with the entire West Side and her conclusion

as to the nature of the low income occupants as being "upwardly mobile" (3804). There is no way of knowing whether the low income families already in the Area or to come in later are "upwardly mobile". In fact the experience up to now has been that they largely are not as we have seen from the testimony of plaintiffs' witnesses on the trial.

Dr. Gans (3690-3734) is the only witness of defendants on tipping point who is not a public official who had already made a total and public commitment to the changes made in the Plan.

He indicated that he agreed with the testimony of Roger Starr and Frank Kristol except that he disagrees that the neighborhood will tip (3704, 3705, 3707, 3708). Thus the difference in testimony between plaintiffs and defendants' case in this crucial regard is the narrow one of an opinion on whether or not the neighborhood will tip. He testified that tipping point is a relative or variable term and that it is an inaccurate concept on which to base predictions (3691-3697).

Thus it is understandable that eminent experts can disagree. One thing is undisputable, however, and that is that tipping point is a factor to be considered and that alone under Otero, as we have shown above, is sufficient to justify

intervention by the Court to evaluate and take remedial action against the danger of tipping and the ultimate segregation of the Area as a result of the violations of the Plan by defendants.

Dr. Gans testified that factors in the tipping process vary tremendously from community to community depending on the people who live in the Area, who the newcomers are; whether they are homeowners or renters; what ethnic groups they are from and the opportunities to improve housing conditions. There are many factors in the whole tipping process but he lists four with relevance to Manhattan: (1) the entry into a neighborhood of very large numbers of people who don't care about the neighborhood, who have personal problems such as being unable to control their children; (2) the general deterioration in the housing stock, community services and facilities in the area; (3) traumatic, intense fear of crime and (4) the advantages of moving (3695-3697)

When these factors are weighed against the overwhelming testimony of plaintiffs' witnesses and Exhibits it appears that all of Gans' elements exist in the Area and that, in fact, deterioration has firmly set in. As long as they are

present Court intervention is justified under the doctrine of Otero and the relief sought by plaintiffs should be granted irrespective of whether one expert or another makes a guess as to whether or not tipping will actually occur.

It should be noted, however, with respect to Dr. Gans' testimony that he made no survey of the Area (3708) and had no prior contact with it as a public official or for a private client. This is in sharp contrast to plaintiffs' expert witnesses Starr, Fried, Gaynor, Kristof and Sulzberger, all of whom had direct and intimate contact with the Area over a long period of time as participants either in the management of properties in the Area, as officials active in the processing and execution of the Plan or as representatives of a private watch-dog agency whose duty it was to follow and comment on the development of the Plan from the very beginning.

11. PLAINTIFFS ARE ENTITLED TO AN INJUNCTION RESTRAINING DEFENDANTS FROM VIOLATING THE PLAN AND DIRECTING DEFENDANTS TO PERFORM AND COMPLETE THE PLAN IN ACCORDANCE WITH ITS TERMS

We have set forth in the Statement the specific relief sought in this action. Basic to that relief is the request for the designation of a Special Master to oversee, in accordance with the direction of the Court, the execution

and completion of the Plan. This is required because of the complex elements involved in the execution of the Plan to completion and the fact that the defendants have demonstrated their inability, without proper supervision, to accomplish the purposes of the Plan.

Thus, we are confronted here with a situation where firm guidance and control is needed to effectuate the Court's direction if the Court agrees with plaintiffs' contentions in this case. That control must consist of day to day supervision of defendants' activities with respect to the Plan and that can best be accomplished by the designation of a Special Master acting under direction of the Court.

The exceptional circumstances required by Rule 53(b), 28 U.S.C.A. are presented by this case and a Special Master should be appointed to oversee the completion of the Plan, under the continuing jurisdiction of this Court. See Harte v. Community School Board of Brooklyn, District 21, F.Supp. , (Weinstein, J., E.D.N.Y., Jan. 28 1974, No. 72 C - 1041); Moore v. Leflore County Board of Election Commissioners, 361 F.Supp. 603 (N.D. Miss. 1972); Kapral v. Jepson, 271 F.Supp. 74 (D. Conn. 1967). See also Norwood v. Harrison, U.S. ,

A-298

93 S. Ct. 2084 (1973); Raney v. Board of Education of Gould School District, 391 U.S. 443, 88 S.Ct. 1697 (1968); Alexander v. Holmes County Board of Education, 396 U.S. 19, 90 S. Ct. 29 (1969).

POINT II

NON-COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 MAKES ILLEGAL THE FEDERAL DECISION TO FUND PUBLIC HOUSING AT SITE 30

1. THE DECISION IS ILLEGAL BECAUSE NO ENVIRONMENTAL STATEMENT WAS PREPARED AS PART OF THE DECISION MAKING PROCESS

The National Environmental Policy Act of 1969, 43 U.S.C. 4322 et seq., P.L. 91-190 (hereinafter "NEPA") requires the preparation of "a detailed statement" of the environmental implications of "major federal actions significantly affecting the quality of the human environment". NEPA §102(2)(c). The Environmental Impact Statement requirement of NEPA is the "action forcing" requirement of the Act. The Act requires detailed consideration being given to the environmental consequences of federal actions. The detailed consideration is required so that the National Environmental Policy set forth in the Act would be carried out. See Calvert Cliff's Coordinating Committee v. AEC, 449 F.2d 1109 (D.C. Cir., 1971), cert. denied 404 U.S. 942 (1972).

The Guidelines of the Council on Environmental Quality (hereinafter "CEQ") instruct each agency of the federal government and set forth the requirements for the preparation of Environmental Impact Statements.

(40 C.F.R. §1500, et seq., Federal Register, August 1, 1973, 20550 ff, hereinafter "CEQ Guidelines".)

The Department of Housing and Urban Development has implemented and interpreted NEPA in accordance with the CEQ Guidelines. The basic regulation of HUD setting forth its NEPA regulations is HUD Handbook 1390.1. (Federal Register, July 18, 1973, p. 19182 ff, hereinafter "HUD Handbook"; see also proposed HUD regulations at 39 F.R. 6816, February 25, 1974.)

No Environmental Impact Statement pursuant to these regulations has been prepared in the instant case (3368). This failure constitutes lack of compliance with NEPA representing a denial of due process which will result in irreparable harm to plaintiff as proven at trial.

This is a landmark case in that it puts squarely at issue the basic substantive issues of the urban environment. Issues of the quality of the environment of urban dwellers, in its full range of social, cultural, esthetic, as well as physical dimensions, are raised. HUD did not consider these issues when it decided to fund low income housing at site 30. The key document presented in evidence at this trial by HUD states on its face that social issues are not environmental issues within the

purview of NEPA. (Negative threshold determination, Memo from Maylott to Green, May 4, 1972, first page, Defendants' Exhibit E). This position is wrong as a matter of law.

A. The Decision not to Prepare an Environmental Impact Statement was Wrong as a Matter of Law

The decision not to prepare an Environmental Impact Statement in the instant case was made by the HUD area office (3120) and affirmed by the Regional Office (3340) based on a finding that the environmental implications of this project were not such that an Environmental Impact Statement was required.

(i) The Scope of the Definition of Environment Used by the HUD Area Office was Improperly Narrow

The HUD Handbook states that the term "environment" "is meant to be interpreted broadly to include physical, social, cultural and esthetic dimensions." (Paragraph 2a) The HUD definition of environment then goes on to state several examples of environmental considerations including:

> "air and water quality, erosion control, natural hazards, land use planning, site selection and design, subdivision development, conservation of flora and fauna, urban congestion, overcrowding, displacement and relocation resulting from public or private action or natural disaster, noise pollution, urban blight, code violations and building

A-302

> abandonment, urban sprawl, urban growth policy, preservation of cultural resources, including properties on the National Register of Historic Places, urban design and the quality of the built environment, the impact of the environment on people and their activities." (Paragraph 2a)

This broad definition of environment is consistent with several court decisions. For example, Hanly v. Mitchell, 460 F.2d 640 (2nd Cir., 1972), a leading case interpreting NEPA in the Second Circuit, states at 647:

> "The National Environmental Policy Act contains no exhaustive list of so-called 'environmental considerations,' but without question its aims extend beyond sewage and garbage and even beyond water and air pollution. See Ely v. Velde, 451 F.2d 1130 (4th Cir., 1971); Goose Hollow Foothills League v. Romney, 334 F.Supp. 877 (D. Ct., 1971). The Act must be construed to include protection of the quality of life of city residents."

The threshold decision that an Environmental Impact Statement was not required in the instant case is documented. (First page of Defendants' Exhibit E.) This document states that

> "it is the finding of this office that approval of this proposal is consistent with all applicable HUD environmental policies and standards, and that the proposed HUD action does not otherwise have a significant adverse impact on the environment in terms described by PL 91-190 [NEPA] and related guidelines of the Council on Environmental Quality.
>
> "Despite the contrary statement by NYCHA [New York City Housing Auhority] in their draft

environmental clearance worksheet, there is considerable organized opposition to the project, and the urban renewal plan change which enables this development is currently in litigation. It is our understanding that although this opposition is motivated by alleged social impacts of the proposed project, such impacts are not environmental impacts within the context of §101(b) of NEPA." (emphasis added)

Social dimensions are directly and explicitly included in the NEPA definition of environment. It is included in the HUD regulations. The narrow interpretation is inconsistent with the broad definition of environment used in this Circuit. (Hanly v. Mitchell, (Hanly I), 460 F.2d 640 (2d Cir., 1972) cert. den. 93 S.Ct. 313 (1972); Brotherhood Blocks Association of Sunset Park v. Secretary of Housing and Urban Develpment, F. Supp. , 5 ERC 1867 (E.D.N.Y., Sept. 6, 1973); McLean Gardens Residents Association v. National Capital Planning Commission, F. Supp. , 4 ERC 1708 (D.C.D.C., 1972).

Therefore, this decision which is based on the erroneous position that social impacts are not environmental impacts within the context of NEPA, must be set aside.

(ii) The Decision Not to Prepare an Environmental Impact Statement was Wrong as a Matter of Law Because the Action was Controversial

The decision to change the designation of site 30 from middle income housing to low income housing, and the decision to fund low income housing at site 30, are highly

controversial. They have been highly controversial since they were first proposed. City and federal decision makers were aware of the controversy surrounding these decisions and of the substantive basis for this controversy (Maylott 3166, Green 3364, Hazen 3173).

The substantive nature of the controversy was brought to the attention of city and government decision makers through a series of meetings held by plaintiffs and others with responsible federal and city government officials. (Fine 166-168, 1331-1334, Gratz 2993-2995, Leibert 1820-1823, Olinger 3200, Maylott 3116, Green 3364) In addition, many letters and memoranda were sent by plaintiffs and others to these government officials setting forth the substantive concerns they had about the environmental implications of these government decisions (many of these are included as appendices to Defendants' Exhibit B and Defendants' Exhibit E).

Proposed federal actions, "the environmental impact of which is likely to be highly controversial" should have Environmental Impact Statements prepared as part of the process of making a decision on that project or action (CEQ Guidelines, §1500.6(a)).

A-305

In the case of Hanly v. Kleindienst,(Hanly II,) 471 F.2d 823 (2nd Cir., 1972), a proposed methadone maintenance center in a jail to be built behind the Federal Courthouse at Foley Square in Manhattan gave rise to controversy. In requiring the preparation of an Environmental Impact Statement, the Second Circuit said that "the term 'controversial' apparently refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action" and that this dispute is one of substance (at 830)." See also Silva v. Lynn, 482 F.2d 1282 (1st Cir., 1973).

The existence of the controversy, well known to federal decision makers, renders the decision not to prepare an Environmental Impact Statement for this project arbitrary and capricious.

(iii) The Decision not to Prepare an Environmental Impact Statement was Illegal Because the Cumulative Effects of this Decision in the Context of Numerous Other Governmental Decisions Was Not Considered

The decisions at issue in this case are individual decisions in a series of governmental evaluations which cumulatively result in significant environmental impact. The concept of tipping which is central to this case is based on the cumulative results of a series of governmental

decisions.

The decisions which have cumulative environmental significance for the West Side Urban Renewal Area have included the acceptance and quasi-legitimization of squatters in abandoned buildings scheduled for demolition (3170, 3172, 3184-3185, Olinger 3206-3207); the tenancy of a number of mixed income buildings by low income tenants above the planned ratio of 30% low income - 70% middle income, (Starr 230, Sulzberger 1701-1702, Green 3320-3322); the acquiescence in this irregularity by the federal officials, (Green 3354-3356);the introduction of welfare families into apartments designated as middle income apartments (Starr 230, Crystal 3772, Leibert 1864-1872 Plaintiffs' Exhibits 32, 46 and 47);and the redesignation of site 4 from middle income designation to low income designation (Plaintiffs' Exhibits 24 and 28). These decisions are in the context of government decisions which have delayed the completion of the Plan (Goodwin 3784).

The cumulative environmental impacts and implications of all of these decisions are significant. NEPA requires their study and consideration. The CEQ Guidelines state that the cumulative impact of an action in the context of all governmental actions related thereto must

A-307

be considered. They recognize that "the effect of many federal decisions about a project or complex of projects can be individually limited but cumulatively considerable". The regulations state that the threshold decision of whether to prepare an Environmental Impact Statement must be made with a view to the overall, cumulative impact of the action proposed, related to federal actions and projects in the area, and further actions contemplated. CEQ Guidelines, §1500.6(a).

The decisions at issue in this case represent decisions in a continuum which has caused tipping and has put the stability and environmental quality of the neighborhood in decline. This decline into fear and physical degeneracy is distinctly environmental and is the quintessential state of environmental problems in urban areas.

The Second Circuit, in setting forth its test of significance relative to the threshold decision stated that the action in question should be examined by the federal agency in light of "the cumulative harm that results from the contribution of existing adverse conditions or uses in the affected area" (Hanly II, 471 F.2d at 831). Similarly, the Second Circuit recognized the cumulative aspects of neighborhood stability and the need for affirmative action

on the part of governmental agencies to assure basic stability of governmentally assisted housing in the case of Otero v. New York City Housing Authority, 484 F.2d 1122 (1973).

The cumulative environmental consequences of the governmental action at issue in this case have not been considered by the federal defendants as part of the decision making with respect to site 30. This failure renders this decision not to prepare an Environmental Impact Statement arbitrary and capricious because it is based on an inadequate environmental review.

B. An Environmental Impact Statement Should Have Been Prepared Relative to the Whole West Side Urban Renewal Area

No Environmental Impact Statement has ever been prepared relative to the West Side Urban Renewal Area. The major redevelopment and social dynamic planned for the Area was intended to significantly enhance the environmental quality of Area residents. This redevelopment would require the preparation of an Environmental Impact Statement today. San Francisco Tomorrow v. Romney, 472 F.2d 1021 (9th Cir., 1973); Businessmen Affected Severely by the Yearly Action Plans v. District of Columbia City Council, 339 F.Supp. 793 (D.D.C., 1972)

The instant decisions require a review of the whole issue of environmental quality of the entire Area. (Businessmen Affected Severely by the Yearly Action Plans, Inc. v. District of Columbia City Council, supra.)

As defendants have produced no Environmental Impact Statements relative to the West Side Urban Renewal Area, the urban renewal plan or any amendment thereto, the decision to fund public housing on site 30 must be set aside as illegal.

C. The Decision not to Prepare an Environmental Impact Statement is Illegal Because No Opportunity was Provided for the Public or Government Agencies to Comment on it.

The New York State Department of Environmental Conservation by letter of August 18, 1971 stated its position that an Environmental Impact Statement is required for the instant project (letter of John C. Harmon, Senior Planner, New York State Department of Environmental Conservation to Ralph Lapadula, New York City Area Office, HUD, appended to Defendants' Exhibit E). The New York State Planning and Development Clearinghouse indicated concern for the preparation of Environmental Impact Statements with regard to this project by letter to the New York Area Office of HUD dated July 30, 1971 (letter of

Thomas J. McDonald, State Clearinghouse Administrator, to Joseph Schiffman, Program Manager, New York Area Office, HUD, set forth as an attachment to Defendants' Exhibit B.) These requests were ignored by the federal government.

The essence of the requests of plaintiffs, as set forth in meetings (Fine 1331-1354, 1349-1350, Leibert 1820-1823) and correspondence (Defendants' Exhibits B and E) is that the environmental consequences be thoroughly considered. Defendants did not even make it public that no Environmental Impact Statement would be prepared.

It is essential that a variety of public agencies and interested private groups as citizens be allowed to participate in the process by which an agency conducts its environmental analysis for that analysis to be thorough. Sylva v. Lynn, 482 F.2d 1282 (1st Cir., 1973). This is why the CEQ Guidelines require agencies preparing environmental statements to comment directly and responsively to all criticisms raised through the agency's work before the preparation of a final statement. (CEQ Guidelines, §1500.2(b) and also 1500.7, 1500.9) The Special Environmental Clearance prepared by HUD in the instant case was not made available to the public generally for comment and response by any media or in any forum. Plaintiff

did not have the opportunity to comment on it. No opportunity to comment was provided to either the New York State Department of Environmental Conservation or to the New York State Clearinghouse even in light of their specific request.

Some procedure must be provided for the acceptance of public comment during the environmental review conducted by the agency. These comments must be considered for the process to be anything but a hollow one. Hanley II. Hanley II requires that there be an opportunity for facts to be given to the decision maker as part of the threshold determination. Courts have gone so far as to hold that a preliminary injunction can issue to give the public more time to consider environmental analysis than was otherwise provided, holding that lack of opportunity to consider the environmental analysis and to prepare criticisms of it would allow irreparable harm to be done to plaintiff. City of Rye v. Schuler, 355 F.Supp. 17 (S.D.N.Y., 1973)

The lack of opportunity for public comment on the threshold decision not to provide an Environmental Impact Statement and on the documentation which supported it, to wit, the Special Environmental Clearance, renders the threshold decision arbitrary and capricious and

therefore an illegal abuse of agency discretion.

2. THE DECISION TO FUND PUBLIC HOUSING AT SITE 30 IS ILLEGAL BECAUSE THE ENVIRONMENTAL REVIEW CONDUCTED BY HUD WAS INADEQUATE AS A MATTER OF LAW.

The environmental review conducted by HUD on the implications of the decision to fund low income housing at site 30 is contained in the Special Environmental Clearance worksheet set forth as the second through eighth pages of Defendants' Exhibit E. This review failed to consider a large number of the environmental consequenses of the decision and failed to consider alternatives to the project.

A. The Environmental Review was Inadequate as a Matter of Law Because There was no Consideration of a Large Number of Environmental Consequences of the Project Decision

A number of witnesses testified to their observation of incidents and events which raise serious questions about the environmental quality of the Area. The testimony of Messrs. Karlen, Fine, Hudgins, Bromberg, Garcia, Olneck, Roth, Sifonte, Friedberg and Owens and of Mrs. Sauers and Leibert all exhibit incidents which, when taken together, put into serious question the environmental condition of the Area. This testimony included instances of a large number of incidents of

Crime
- Dope Trafficking
- Muggings
- Assaults
- Murder
- Prostitution
- Burglary
- Robbery

Juvenile Delinquency
Destruction of Property
Unhealthy Sanitary Conditions
- Graffiti
- Gargage
- Vermin, including roaches and rats

Noise
Loitering, Derelicts and Drunks
Community Polarization
Fires
Vandalism
Fear
Creation of Neighborhood Tensions

Mr. Starr stated that "tipping point" refers to an area of racial mixture which, when it is in equilibrium, remains integrated, but when the minority population reaches a level at which a member of the majority moves out, it is impossible to find a member of the same majority to move in. Once that point has been reached, the neighborhood tips over so that it no longer provides racially integrated living. The area rapidly becomes exclusively a minority group occupancy (234-235). Tipping point is both a matter of economic and racial balance (263). Starr stated that there were three criteria of tipping: (1) the gross number of low income families; (2) the

extent of community services indigenous to the area; and (3) the attitude of people who might be persuaded by their own fears to leave (329-348).

"Tipping point" was defined by Dr. Kristoff as a sociological concept describing a set of conditions in an area at which the normal relationships begin to change. The change involves the rapid ingress of new families and the departure of existing families at a rapid pace so that the characteristics of the neighborhood change rather radically within a short period of time. He stated that usually this change was from a given economic group to a lower economic group (2509). He stated that the concept of tipping implies a set of undesirable neighborhood conditions and deterioration involving the sociological characteristics of the people who live in the area and those who are moving out as well as the physical aspects, the condition of housing, whether it is being maintained or whether it is deteriorating, the condition of the streets vis-a-vis litter and garbage, the feelings of people as to safety in the streets, conditions of fear, police and fire services, dirt and litter, loitering, delinquency and crime. He stated that tipping involves racial and economic changes. He stated that racial characteristics were not a generic part of the definition of tipping, but

that tipping is a correlation of low income with racial and economic characteristics at a given time and that the tipping concept is more an economic concept than a racial one (2522-2531).

Gans listed four factors in the tipping process, including (1) the entry into a neighborhood of very large numbers of people who do not care about the neighborhood, and who have personal problems; (2) the general deterioration in the housing stock, community services and facilities; (3) traumatic, intense fear of crime; and (4) the advantages of moving (3695-3697).

The tipping issues, and the other issues mentioned above, were known to the government decision makers prior to and during the environmental analysis.

It has been clearly shown that a large number of environmental factors, impacts and effects are at issue in this case.

The broad definition of environment required by the law, the cases and the HUD regulations include an extensive range of environmental factors which may be at issue in any particular project decision. The HUD Handbook lists 24 environmental considerations as examples of the kind and range of consideration which may be involved in a particular project. The HUD regulations further

state that the broad definition of environment has such examples along each of the broad dimensions of the environment which are there stated to be physical, social, cultural and esthetic. The case law endorses the broad definition of environment. Hanly I, supra, at 646; Calvert Cliff's Coordinating Committee v. AEC, 449 F.2d 1109 (D.C. Cir., 1971); Save Our Ten Acres v. Kreger, 472 F.2d 463 (5th Cir., 1973)

Of the several examples of environmental effects set forth in the HUD Handbook (at Par.2(a)), the following effects were either not analyzed at all or were incompletely analyzed:

Site selection and design
Urban congestion
Overcrowding
Displacement and relocation
Urban blight
Urban growth policy
Urban design
Quality of the built environment
Impact of the environment on people and their activities

In addition to those examples, the following is a list of environmental issues which are directly relevant to environmental quality in the Area and which had to be thoroughly analyzed pursuant to NEPA. They were not so analyzed.

Neighborhood stability
Tipping
Tipping point
Community attitudes

Fear
Urban decay
Crime
Garbage
Noise
Traffic and parking

There is no dispute that many of these issues were not considered adequately. John Maylott, the federal official responsible for the environmental analysis and the person responsible for the threshold decision, stated at trial that the environmental analysis documentation prepared by his office did not cover all facts of urban blight, urban decay, urban design, the quality of the built environment, esthetic values, neighborhood stability, or psychological attitudes and fears (3121-3123).

Harry Foden, a professional with extensive experience with housing and urban development projects (2839), who has prepared major studies on these issues for better than 20 years (2838-2849) and who has been involved with the preparation of numerous Environmental Impact Statements, including one for the John F. Kennedy Presidential Library in Cambridge, Massachusetts, stated that neither the environmental documentation (Defendants'

Exhibit E) nor the site selection criteria (Defendants' Exhibit B) considered urban blight, neighborhood stability, community attitudes and fears or social issues regarding the proposed project (2857-2865, 2876).

Examination of material prepared by HUD enclosed in either Defendants' Exhibit E or Defendants' Exhibit B, even when read with material supplied by applicant and all of the other disparate material which has been submitted to form part of this exhibit, indicates no consideration being given to these issues.

Because that environmental analysis conducted by HUD surrounding this decision and set forth in the Special Environmental Clearance prepared by HUD does not consider the range of environmental issues which must be considered incident to this project, the analysis is inadequate as a matter of law and the finding based on it is arbitrary and capricious. Hiram Clarke Civic Club, Inc. v. Lynn, 476 F.2d 421 (5th Cir., 1973), Hanly II, supra.

B. The Environmental Review Conducted by HUD was Inadequate as a Matter of Law Because no Consideration was Given to Alternatives to the Project

The Special Environmental Clearance Worksheet prepared by HUD to accompany the application for a public housing project at site 30 is set forth as the second document in Defendants' Exhibit E. Nowhere in it is any consideration given to site, design or policy alternatives to the project. What is more, none of the documentation attached to the Special Environmental Clearance Worksheet in Defendants' Exhibit E nor any of the documentation prepared by HUD or the New York City Housing Authority in Defendants' Exhibit B give any consideration to any alternatives to the proposed project (Maylott 3124, Foden 2859-2860).

NEPA requires the consideration of alternatives to the project and of the environmental implications of such alternatives. (NEPA §102(2)(d), NEPA §102(2)(c)(iii)) Read together, the two sections of NEPA indicate a firm requirement that a broad range of alternatives to a particular project be considered. In construing these two sections of NEPA, the court in the case of

Environmental Defense Fund v. Corps of Engineers, 492 F. 2d 1123, (5th Cir., 1974) states that NEPA insists

> "that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means" (6ERC 1520)

CEQ Guidelines require the consideration of alternative sites to the site for a particular proposed project. (CEQ Guidelines, §1500.2(b)) Not only must alternative sites be considered, alternative policies and alternative designs to a particular proposal must also be considered. (CEQ Guidelines, §1500.8(a)(4)) This requirement for the consideration of alternatives is not limited to those alternatives within the competence of the particular agency but must extend to alternatives for which other government agencies may have more direct jurisdiction. CEQ Guidelines §1500.8(a)(4), see also Natural Resources Defense Council v. Morton, 458 F. 2d 827 (1972). Importantly, the no action alternative which involves the alternative of taking no governmental action or doing nothing must be considered and the environmental consequences of it weighed. (CEQ Guidelines, §1500.8(a)(4)), Environmental Defense Fund

v. Corps. of Engineers, supra.

The HUD Handbook requires alternatives to be considered in some detail. It requires that "the full array of possible alternatives to the proposal (including those beyond HUD's immediate control) which would significantly alter the environmental impact of the Project" to be considered (HUD Handbook, Appendix C-3, Question I). It further states that alternative sites, locations, sizes and designs be considered (HUD Handbook, Appendix C-3, Question I).

The omission of any consideration of alternative sites, locations, sizes, designs or policy alternatives renders the analysis performed by HUD in the instant case inadequate as a matter of law and renders the determination based on it arbitrary and capricious.

C. The Environmental Review Conducted by HUD was Inadequate as a Matter of Law Because HUD did not Conduct an Independent Analysis of Environmental Issues

HUD prepared the Environmental Clearance Worksheet relying on information supplied by the applicant, the New York City Housing Authority. Much of the information enclosed in the applicant's Environmental Clearance Worksheet

is inadequate and there is a great deal of information which should have been included which was not. (Foden 2880)

Such review as HUD did conduct of the applicant's document revealed omissions and inaccuracies. For example, the applicant's statement that the project was not controversial was grossly inaccurate and was correctly identified as being inaccurate by HUD (Paragraph f 5, Special Environmental Clearance Worksheet, the second document in Defendants' Exhibit E).

The NEPA requirement that each agency consider the environmental effects of its actions has been consistently interpreted to require the federal agency to independently consider the environmental implications of decisions. It is not enough to rely on the application and/or environmental information supplied by the applicant for federal aid. (Greene County Planning Board v. FPC, 455 F. 2d 412 (2d Cir., 1972), cert. den. 409 U.S. 849, (1972); Calvert Cliffs Coordinating Committee v. AEC, 449 F. 2d 1109 (D.C. Cir., 1971), cert. den. 404 U.S. 942 (1972); Committee to Stop Route 7 v. Volpe, 346 F. supp. 731 (D. Conn. 1972)

The HUD Handbook requires that independent consideration be made as part of the environmental analysis.

This consideration must be independent of material submitted by the applicant. (e.g., HUD Handbook, Appendix C-3, Paragraph I)

Lack of independent analysis of the environmental implications of this project by HUD renders the analysis insufficient as a matter of law and renders the decision based on it arbitrary and capricious.

POINT III

THE COURT SHOULD AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO PLAINTIFFS

1. ATTORNEY'S FEES

A. Circumstances Under Which Attorney's Fees May Be Awarded

Although under our system of justice attorney's fees are not ordinarily allowed to litigants, where the action has been brought to vindicate a public right or has conferred a substantial benefit on an ascertainable class counsel fees may be awarded.

Mills v. Electric Auto-Lite Company, 396 U.S. 375 (1970)

Hall v. Cole, 412 U.S. 1 (1973)

As related to the issues involved in this case there are three categories where counsel fees have been allowed:

(a) Wnere there is a common benefit established;

(b) Where the Civil Rights Law is involved; and

(c) Where the National Environmental Protection Act is involved.

(a) Common Benefit

Where a substantial benefit is conferred on an ascertainable class courts have allowed counsel fees even though the benefit is not pecuniary and even when the party conferring the benefit was not the prevailing party. Mills v. Electric Auto-Lite Company, supra; Hall v. Cole, supra; Delaware Citizens v. Stauffer Chemical 6ERC 1541 (D.C. Del. 1974); Globus, Inc. v. Laroff, 279 F.Supp. 807 (S.D.N.Y. 1968).

In this case Trinity has brought this action for the benefit of all residents of the Area and consequently fits precisely within the common benefit exception which would justify the Court in awarding reasonable attorney's fees.

(b) Civil Rights Law (42 U.S.C.A. Sec. 198 et seq.)

In Newmann v. Piggy Park Enterprises, Inc., 390 U.S. 400 (1968) the Court held that a prevailing party establishing a public policy of high priority is entitled to attorney's fees. The Court said:

> "If he obtains an injunction, he does so not for himself alone but also as a 'private attorney general', vindicating a policy that Congress considered of the highest priority. If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would

> be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees - not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II."
>
> Bell v. School Board of Powhatan County Virginia, 321 F.2d 494 (4th Cir. 1963)
>
> Knight v. Auciello, 453 F.2d 853 (1st Cir. 1972)
>
> Lee v. Southern Home Sites Corp. 444 F.2d 1943 (5th Cir. 1971) cf. Fleishman Distilling Corp. v. Maier Brewing Co., 386 U.S. 714 (1967)

In this case one of the elements involved is the Federal Civil Rights Law the violation of which is pleaded in the complaint. The testimony shows that the Civil Rights Law will be violated if the Area is allowed to continue on its present course and will eventually become a segregated slum. Otero v. New York City Housing Authority, 484 Fed.2d 1122 (1973)

Thus, in accordance with the Civil Rights Law plaintiffs are entitled to reasonable counsel fees.

(c) National Environmental Policy Act of 1969
(42 U.S.C.A. Sec. 4321 et.seq.)

The analogy between the civil rights area and the environmental protection area is drawn in Sierra Club v. Lynn, 5 ERC 1745, 1746 (W.D. Texas 1973):

> "As in the civil rights area, the burden of assuring full compliance with the national environmental policy, as expressed by Congress through the National Environmental Policy Act of 1969, 42 U.S.C.A. §4321, et. seq., has fallen upon concerned citizens. The mere fact that there is no provision in the statute for the awarding of attorneys' fees will not be viewed as a bar to such an award."

Although plaintiffs were unsuccessful in their suit charging HUD and the San Antonio Ranch, Ltd. with construction of a new community development project which violated the National Environmental Policy Act, plaintiffs were awarded reasonable attorney's fees against San Antonio Ranch, Ltd. The court awarded the fees on the ground that it would be difficult to conclude that the suit did not help to insure that adequate precautions would be taken.

Wilderness Society v. Morton, 6 ERC 1427 (CA D.C. 1974)

National Resources Defense Council, Inc. v. Environmental Protection Agency, 484 F.2d 133 (1st Cir. 1973)

In this case the plaintiffs challenge the failure of the defendants to prepare a full Environmental Impact Statement. This would justify an award of reasonable attorney's fees.

Each of the above reasons are sufficient to justify the award of counsel fees, cumulatively they compel it.

Trinity has borne a heavy burden in the institution and maintenance of this action on behalf of itself and all those in the Area similarly situated. It has likewise acted to vindicate crucial principles in the Environmental and Civil Rights fields. The difficulty resulted from the wanton violation of the Plan by the defendants and they should at least be made to reimburse Trinity and the plaintiffs for their out of pocket expenses in sustaining the action.

B. Against Whom Attorney's Fees May Be Awarded

Attorney's fees may not be awarded against the federal government or a federal agency unless specifically allowed by statute 28 U.S.C.A. 2412. It is, however, within the discretion of the court to grant reasonable attorney's fees in Civil Rights cases. 42 U.S.C.A. Section 2000-5(k)

provides as follows:

> "In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the commission or the United States, a reasonable attorney's fee as part of the costs, and the commission and the United States shall be liable for costs the same as a private person."

Generally, the Civil Rights cases suggest that the award of attorney's fees is not considered merely discretionary, but as essential to providing complete equitable relief in pursuance of a high priority public policy.

However, the City and its agencies do not have sovereign immunity to insulate them from the award of attorney's fees against them, and therefore an express grant is not necessary, nor does it matter whether or not the plaintiffs prevail on the merits. First, any immunity a City may have is derived solely from the state, and through Section 8 of the Court of Claims Act, New York State has waived its sovereign immunity.

In Cox v. Village of Greenwich, 33 A.D. 2d 264, 306 N.Y.S. 2d 987, 991 (1970) the court said:

> "Under the doctrine of the Bernadine case, the universal waiver of sovereign immunity embodied in Section 8 of the Court

> of Claims Act dispenses with the need for special enactments authorizing private claims against the State, which waiver extends to all political subdivisions of the State, including Villages."

Bernadine v. City of New York, 294 N.Y. 361,365 (1945), established that: "None of the civil divisions of the State - its counties, cities, towns and villages - has any independent sovereignty"; and for authority cites City of Chicago v. Sturges, 222 U.S. 313, and Keifer & Keifer v. Reconstruction Finance Corporation, 306 U.S. 381 (1938). Therefore, any conclusion reached regarding a lack of the State's immunity will necessarily apply to the question of the City's immunity.

In Parden v. Terminal Ry of Alabama State Docks Department, 377 U.S. 184 (1964), the court held that by operating a railroad in interstate commerce the State of Alabama had subjected itself to liability imposed by the Federal Employers' Liability Act. The court said:

> Our conclusion that this suit may be maintained is in accord with the common sense of this nation's federalism. A State's immunity from suit by an individual without its consent has been fully recognized by the Eleventh Amendment and subsequent decisions of this Court. But when a State leaves the sphere that is exclusively its own and enters into activities subject to congressional regulation, it subjects itself to that regulation as fully as if it were a private person or corporation." Parden, supra, at page 196.

Recently the Second Circuit has applied this doctrine in subjecting the State to liability under the securities laws for participation in the issuance of subscriptions for cooperatives built under the Mitchell-Lama Law, in Forman v. Community Services, Inc., (73-2613) (June 12, 1974). The court said:

> "To paraphrase the court's opinion in Parden (377 U.S. at 192), by enacting the federal securities laws in the exercise of the commerce clause - a power given to the Federal Government by the states in adopting and ratifying the constitution - the Congress conditioned the right to be involved in the sale and distribution of securities upon amenability to suit in federal court as provided by those regulatory laws."

Similarly in the Trinity case the City has entered into a proprietary function in the development of the Plan in an area subject to federal regulation and has thereby, in any event, waived its sovereign immunity.

Finally, reasonable attorney's fees have been awarded against a state, state officials and state agencies in various situations. La Raza Unida v. Volpe, 57 F.R.D. 94 (N.D. Cal. 1972); Ojeda v. Hackney, 452 F.2d 947 (5th Cir. 1972).

In Taylor v. Perini, 359 F. Supp. 1185 (N.D. Ohio 1973), the court held that the Eleventh Amendment did not prohibit the award of attorney's fees against Ohio. Finally in two Civil Rights cases, Sims v. Amos, 340 F.Supp. 691 (M.D. Ala. 1972), and NAACP v. Allen, 340 F. Supp. 1185 (M.D. Ala. 1972), attorney's fees were awarded against the State of Alabama.

From this review of the authorities it is apparent that the court has jurisdiction in this case to award reasonable attorney's fees to plaintiffs against all of the defendants.

2. COSTS

Federal Rule 54(d) 28 U.S.C.A. allows costs to the prevailing party, within the equitable discretion of the Court and 28 U.S.C.A. §2412 allows them against the United States or any agency or official of the United States in favor of the prevailing party.

Costs can be awarded in this action against the City of New York and against Strykers Bay without regard to whether plaintiffs prevail under Rule 54(d).

This action has been brought by plaintiffs at great cost to themselves in relation to the direct monetary worth of a decision in their favor. They bring this action to improve the environmental quality of the Area and to preserve the integrated nature of their community.

As plaintiffs seeks to further the national environmental policy and national civil rights policy, costs should be awarded to plaintiffs irrespective of whether they prevail on the merits of this action. See National Resources Defense Council v. Environmental Protection Agency, supra; Wilderness Society v. Morton, supra and Sierra Club v. Lynn, supra with regard to environmental policy and, with regard to civil rights policy, Newmann v. Piggy Park Enterprises, Inc., supra; Bell v. School Bd. of Powhatan County, Va., supra, and Knight v. Auciello, supra.

CONCLUSION

What is at stake in this case goes to the very heart of the question which must concern all of us who live here:

Can New York City be saved? Can government be relied upon to carry forth long term solutions to our very complex urban problems?

We have shown in the motion papers, which are part of the Record, during the trial and in this memorandum that the Plan, up until 1970, offered an effective means of reversing the deterioration which threatened to convert the Area, once one of the prime sections of Manhattan, into a slum.

Originally, the Plan conceived of new housing providing for 400 units of low income housing with 25% luxury, 50% middle and 25% low income. During its execution, the Plan was changed to provide 2500 low income units with no luxury housing and a 70% middle income and a 30% low income ratio in the new buildings. These changes were specifically engineered to absorb the greatest numbers of low and moderate income families within an overall framework which would create and preserve a community in economic, racial, religious and social balance.

A number of events, however, since 1970 have undermined this balanced concept and, taken cumulatively, will destroy it and totally reverse the upgraded environment which the Area had been experiencing:

-With one-third of the housing unfinished, the Plan bogged down and passed its estimated completion date of 1970 and the prospect is that it will be many years from now before it can be completed.

-In 1970, squatters occupied buildings cleared for demolition and, having been accorded legal status with full relocation rights, some 274 squatter families remain on the site to this day.

-In 1970, Site 4 was changed from middle to low income housing and in 1972, Site 30 was made over to low income housing as well.

-Section 236 funding, with its income limits approximating public housing, was applied to the 70% so-called middle income portions of new buildings, thus making them fully low income and available to welfare families.

-Larger apartments with two and three bedrooms were allocated to the 30% low income portions of the new buildings,

effecting further increases of the low income population in each new building.

-Changes in the Housing Authority's screening procedures admitted many more multi-problem families to public housing and created greater difficulty in removing troublesome families.

-New buildings became dumping grounds for multi-problem families from other parts of the City.

-Concentration of low income families on 91st Street and the southern portion of the Area.

These erosions of the Plan's original concept have resulted from a reversal of the City's attitude toward performance in accordance with its terms and we do not have to seek far for the reasons behind the reversal. Politicians who put self-interest first and the welfare of the communities they purport to serve last, have used their influence with the City to obtain this reversal of attitude and radical groups, well-versed in the uses of pressure, have clamored for more low-income families to be infused into the Area.

The instant action was instituted by Trinity in a desperate effort to obtain redress for the wrongs committed

by the defendants against the families who either remained in the Area or chose to move into it and made substantial investments, relying on the execution in good faith of the Plan

The plaintiffs and those on whose behalf they speak believe strongly in and have acted upon their expressed desire to live and being up their children in an integrated community. Those who remained in the Area could have fled if they wished to shun contact with minorities. And, certainly, those who voluntarily moved in did so because they wished to demonstrate by their own actions that they believed in the principle of hetereogenous neighborhoods.

This concern was so deep that when it appeared that the Area might tip and become another segregated slum, they still did not flee but chose, instead, to meet the problem head on by taking whatever kinds of action were available to them: they formed groups and held meetings; contacted government officials personally or through letters; demonstrated, printed a newsletter, sought contributions to carry on the fight; and, ultimately, instituted this action as a last resort,

to ask this Court for relief for the wrongs being committed against the community.

Hundreds of millions of dollars of public and private funds have been invested in upgrading the Area and preventing it from "going down the drain"--as the black witness Miles Owens so eloquently testified.

Beyond the huge sums of money involved are the aspirations of men and women of good will toward achieving the good life for themselves and their families in the kind of balanced, integrated community which, to return to our original question, is one of the ways New York City can be saved.

N, while there is still time to restore the Plan to its original concepts, it is appropriate for this Court to intervene through the medium of a Special Master acting under direction of the Court and to grant the other relief sought by plaintiffs.

Respectfully Submitted,

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs

Dated: June 18, 1974
Of Counsel
Eugene J. Morris
Martin Stuart Baker

A-340

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRINITY EPISCOPAL SCHOOL CORPORATION AND TRINITY HOUSING COMPANY, INC.,

Plaintiffs,

-against-

GEORGE ROMNEY, SECRETARY OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, W. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNOR and THE CITY OF NEW YORK

Defendants,

-and-

STRYKERS BAY NEIGHBORHOOD COUNCIL, INC.,

Intervenor-
Defendant.

MARKED
PLEADINGS

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
D	D	D	D, except admit that the action may arise under principles of common law.	1. This Court's jurisdiction is based upon the Fifth and Fourteenth Amendments of the United States Constitution, Title 28 U.S.C. Sections 1331, 1343,1361 and 2201, Title 42 U.S.C. §§ 1982, 1983, 2000d and 3612 and principles of pendent jurisdiction.
D	D	D, except admit that the action may arise under principles of common law	D	2. This action arises under the United States Constitution, the Civil Rights Acts of 1866, 1871, 1964 et seq., the National Housing Act, as amended, the Housing and Urban Development Act of 1965, the rules and regulations of the Department of Housing and Urban Development ("HUD" hereinafter), the Private Housing Finance Law of the State of New York, and the rules and regulations of the New York State Division of Housing and Community Renewal and the Department of Housing and Development Administration of the City of New York ("HDA" hereinafter)

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.
DKI	DKI	DKI	DKI
DKI	A	DKI	DKI
A	A	A	A

and principles of common law.

3. Plaintiff TRINITY EPISCOPAL SCHOOL CORPORATION ("Trinity School" hereinafter), formerly known as New York Protestant Episcopal Public School is, and throughout the times hereinafter, was a coproration organized under the laws of the State of New York by Act of the Legislature of that state on March 14, 1806.

4. Plaintiff TRINITY HOUSING COMPANY, INC. ("Trinity Housing" hereinafter) is, and throughout some of the relevant times hereinafter alleged was, a limited profit housing company organized and existing under Article 2 of the Private Housing Financing Law of the State of New York.

5. (a) Defendant GEORGE ROMNEY is, and throughout some of the times hereinafter alleged was, the Secretary of defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD" hereinafter).

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
A	A	A	A	(b) Defendant S. WILLIAM GREEN is, and throughout some of the times hereinafter alleged was, Regional Administrator of defendant HUD;
A	D, and aver that the power and responsibilities of the defendant HUD with respect to administration of the Urban Renewal Program are set forth in the Housing Act, as amended, 42 U.S.C. Sec. 1451 et. seq. and refer to that statute.	A	A	(c) Defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT is, and throughout the times hereinafter alleged was,the Department charged with the responsibility of distributing funds of the United States Government allocated for various housing programs throughout the United States, overseeing the federal housing acts, housing programs and issuing rules and regulations with respect thereto;
A	A	A	A	(d) Defendant CHARLES URSTADT is, and throughout some of the times hereinafter alleged was, the Commissioner of defendant NEW YORK STATE DIVISION of HOUSING AND COMMUNITY RENEWAL;

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.
A	D, except admit that the N.Y.S. Div'n of Housing and Community Renewal is an agency of the govt of the State of N.Y. and refer to the applicable provisions of law.	A	A
A	D, except admit John V. Lindsay is presently Mayor since 1/1/66.	A	A
A	D, except admit that def. Albert A. Walsh is presently adm'r of HDA.	A	

(e) Defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL is, and throughout some of the times hereinafter alleged was, a division of the Executive Department of the defendant THE STATE OF NEW YORK, charged with the responsibility of supervising various housing programs in the State of New York and issuing rules and regulations with respect thereto;

(f) Defendant JOHN V. LINDSAY is, and throughout the times hereinafter alleged was, Mayor of the City of New York;

(g) Defendant ALBERT A. WALSH is, and throughout some of the times hereinafter alleged was, Administrator of the defendant NEW YORK CITY DEPARTMENT OF HOUSING AND DEVELOPMENT ADMINISTRATION:

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
				State of New York and issuing rules and regulations with respect thereto;
A	D,and refer the Court to Ch. 61 of the N.Y.C. Charter for the powers and duties of def HDA.	A	A	(h) Defendant HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK ("HDA") is,and throughout the times hereinafter alleged was, charged with the responsibility of initiating, conducting, evaluating, supervising and coordinating programs relating to urban renewal and publicly assisted housing, among other things;
A	D, and refer to CH.8 of N.Y.C. Charter for the powers, duties and responsibilities of the City Planning Comm. of the City of N.Y. and A that Elliot, McQuade, Michael, Coleman, Rapkin & Gallent	A	A	(i) Defendant THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK ("City Planning Commission") is, and throughout the times hereinafter alleged was, charged with responsibility of initiating and preparing plans with respect to building projects in the City of New York and conducting hearings with respect thereto, among other things, and defendants

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
	were at times subseq.to 1/1/66 Chairman &Comm'rs of the Comm'n having been app't'd by Lindsay.			DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN and MARTIN GALLENT were chairman and commissioners thereof, respectively; and
	A	A	A	(j) Defendants ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS and ROBERT T. CONNOR are, and throughout some of the times hereinafter alleged were, along with defendant JOHN V. LINDSAY, members of the Board of Estimate of the City of New York.
A	DKI	DKI	DKI	6. Prior to 1962, plaintiff TRINITY SCHOOL owned, maintained and operated a private, non-sectarian, elementary and secondary school located in the area between West 91st and West 92nd Streets between Columbus Avenue and Amsterdam Avenue, in the Borough of Manhattan. The school facilities consisted

Strykers Bay	City of N.Y.	State ofN.Y.	Federal Defs.	
				of a number of buildings built at various times together with supporting athletic facilities. The school provided education from grades 1 through 12 and students for such grades attended and continue to attend Trinity School. Substantial scholarships have been and continue to be made available to students of widely varying backgrounds, including lower economic standings, and, as a result, the school has, continues, and will, continue, to function with, a student body, integrated economically, and in terms of race and creed.
D	DKI	DKI	DKI	7. Prior to and in 1962, the general area and immediate surrounding environs in which Trinity School was located was deteriorated, substandard and unsanitary. The structures in the general area were mostly dilapidated and crumbling, the

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
				racial integration of the community was deteriorating and a high incidence of crime was prevalent.
DKI	DKI	DKI	DKI	8. As a result of the foregoing, plaintiff Trinity School, together with its staff and its students were in constant danger and were subject on a daily basis, to an unhealthy atmosphere. As a result, plaintiff Trinity School commenced planning for the removal of its facilities to a new site located outside of the City of New York.
D insofar as it alleges that the West Side Urban Renewal Area contains or has contained a specified percentage of low income and luxury housing and	D, except admit that defendant City prepared West Side Urban Renewal Plan, which was approved by the U.S. Housing and Home	D, except admit that the "Urban Renewal Plan" provides for renovation of a geographical area known as "West Side Urban	DKI, except admit that the "Urban Renewal Plan" being the March/66 Amended Urban Renewal Plan (Fourth Revision), provides for the renovation of a geographical	9. Defendants CITY OF NEW YORK and HDA devised and promulgated with the approval and assistance of (financial and otherwise) of defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL and the HOUSING AND HOME FINANCE AGENCY OF THE UNITED STATES OF AMERICA (the predecessor agency of

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.
supportive facilities.	Finance Agency, the N.Y.S. Division of Housing and Community Renewal, the City Planning Commision and by the Board of Estimate by resolution adopted June 26, 1962 (Cal No. 5-A), and amended by resolutions adopted Nov. 21, 1963 (Cal.No. 12-A), Dec. 3, 1964 (Cal.No. 11-A), Oct.14, 1965 (Cal.No. 24-A), Oct.27, 1966 (Cal.No. 11-A), and Dec.9, 1966 (Cal.No. 4-A) and refers to the contents	Renewal Area."	area known as the "West Side Urban Renewal Area."

defendant HUD), a plan for the replanning, improvement, reconstruction and neighborhood rehabilitation of the general area in which plaintiff TRINITY SCHOOL was located. (The area became known as and is hereinafter described as the West Side Urban Renewal Area.) The plan, as prepared by defendant CITY OF NEW YORK and HDA (or its predecessor, the Housing and Redevelopment Board) was approved by defendant THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, the predecessor HUD (the HOUSING AND HOME FINANCE AGENCY), defendant CITY PLANNING COMMISSION and by the BOARD OF ESTIMATE OF THE CITY OF NEW YORK. The plan is hereinafter referred to as the "URBAN RENEWAL PLAN." The URBAN RENEWAL PLAN was

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
	thereof.			designed to provide for the revitalization of the West Side Renewal Area through the creation of middle income housing, together with specified amounts of both low income and luxury housing and associated and related facilities so as to establish a racially, ethnically and economically integrated community.
A	D so much as alleges representations made by def.City, DKI as to the remaining allegations except A that defendant City and Plaintiff entered into an agreement dated June 20, 1968,	DKI	DKI	11. Acting in reliance upon representations made by defendant CITY OF NEW YORK and relying upon the West Side Urban Renewal Plan and its terms and conditions, plaintiff TRINITY SCHOOL agreed to abandon its plans for moving outside of the City of New York and, instead, agreed to remain at its then location and to acquire additional adjoining

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
	with respect to the disposition of Site 24 in the West Side Urban Renewal Area and refer to the text thereof.			property from the City of New York with the West Side Urban Renewal Area, and to construct thereon, in addition to its school facilities, a rental housing development to be built over a new school addition, with financing and supervision to be provided pursuant to Article 2 of the Private Housing Finance Law of the State of New York. Plaintiff TRINITY SCHOOL and defendant CITY OF NEW YORK entered into and executed a written agreement with respect to the foregoing and the Urban Renewal Plan for the integrated community formed part of said agreement.
DKI	D so much as alleges representations made by def. City;	DKI	DKI	12. (a) Plaintiff TRINITY SCHOOL duly performed its obligations under the aforesaid agreement and in

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
	DKI as to remaining allegations, except, A that plaintiff acquired from def. City a plot of land known as Site 24, located in the West Side Urban Renewal Area, in accordance with an agreement between plaintiff and def. City dated June 20, 1968, and refer to the contents thereof.			reliance upon representations of the City of New York it acquired from said defendant a plot of land located in the renewal area and known as SiteNo. 24 and constructed thereon a school addition and apartment building. In performing the foregoing, plaintiff TRINITY SCHOOL expended more than $3,000,000 of its funds and it and plaintiff TRINITY HOUSING incurred mortgage liabilities of approximately $5,800,000.
D	DKI	D I	KI	(b) In reliance upon the foregoing agreement, the Urban Renewal Plan and representations of the City of New York and to induce

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
				tenants to occupy the apartment building, plaintiff TRINITY SCHOOL assured prospective occupants and tenants that the community wide area in which the building was located would be a fully economically, ethnically and racially integrated middle income housing area pursuant to the Urban Renwal Plan, and based thereon, plaintiff TRINITY SCHOOL was able to secure occupants for its apartment building.
D	D	D	D	13. Subsequent to the construction of the school addition and the apartment building and to the rental of apartments in such building, defendants have publicly stated their intention to convert substantial portions of the West Side Urban Renewal Area changing the

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
				community wide area from one of a fully racially, ethnically and economically integrated one, as delineated in the Urban Renewal Plan and in representations of defendant CITY OF NEW YORK to plaintiffs, as aforesaid, to one of low income housing without regard to ethnic, economic or racial integration, thereby destroying the fabric of the community and have commenced specifically, to effectuate the aforesaid, without proper hearings or proceedings.
D	D	D	D	14. If the changes are made, it would violate plaintiffs' rights for the following reasons:
				(a) It would be in breach and in violation of the agreement between the parties and the various representations which caused

Strykers Bay	City of N.Y.	State of N.Y.	Federal Defs.	
				plaintiffs to expend substantial amounts of money;
D	D	D	D	(b) It would unduly impair and affect plaintiffs' investments and contractual rights;
D	D	D	D	(c) Said changes and the manner in which they are being made violate plaintiffs' rights in that they are being made without proper hearings as required and said changes and the manner in which they are being made violate plaintiffs' rights under the United States Constitution , the National Housing Act, the Housing and Urban Development Act, the rules, directives and regulations of the applicable agencies and the Urban Renewal Plan.
D	D	D	D	15. Plaintiffs have no adequate remedy at law and they will be irreparably

injured if the threatened changes are effectuated.

WHEREFORE, plaintiffs demand judgment as follows:

(a) Enjoining and restraining the defendants and each and every one of them, their agents, servants, employees or representatives from promulgating, making or effectuating any changes in the West Side Urban Renewal Plan made part of the Agreement between the parties;

(b) Awarding to plaintiffs any damages which they have sustained; and

(c) Such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action.

DEMOV, MORRIS, LEVIN & SHEIN

By /s/ Irving Bizar
A Member of the Firm
40 West 57th Street
New York, New York 10019
Attorneys for Plaintiffs

AFFIRMATIVE DEFENSES ASSERTED BY DEFENDANTS

Strykers Bay	City of New York	State of New York	Federal Defendants
Third Lack of jurisdiction.	First Lack of subject matter jurisdiction.	First Lack of subject matter jurisdiction.	Plaintiffs fail to cite any statute which confers jurisdiction over this action.
	Second Failure to state a claim.	Second Failure to state a claim.	Second Failure to state a claim.
			Third HUD is not a suable entity.
			Fourth S. William Green in his capacity as Regional Administrator of HUD is not a suable person.
			Fifth Action is premature because it seeks an advisory opinion.
	Third The City defendants have acted in accordance with applicable constitutional and statutory provisions of law and agreements with respect to the WSURA projects.	Third The State defendants have acted in accordance with applicable constitutional and statutory provisions of law with respect to the subject WSURA.	
Second Lack of standing.			
Fourth West Side Urban Renewal Area Plan was illegal and void.			

Strykers Bay	City of New York	State of New York	Federal Defendants
Fifth Plaintiffs' investment is subject to the terms of the Urban Renewal Plan and the amendments thereto.			
Sixth Plaintiffs' claim is based upon an oral commitment which is unenforce-able.			
Seventh An injunction would deny housing opportunities for those displaced by the Plan and is a denial of equal protection of the laws under the 14th Amendment.			

EXHIBIT B

DETAILED ANALYSIS OF
THE TESTIMONY OF ALL
WITNESSES WHO TESTIFIED
ON THE TRIAL

A-360

EXHIBIT B

THE TESTIMONY

ROLAND N. KARLEN
(71-133, 2614-2628)

Mr. Karlen, an advertising man purchased 34 West 94th Street a brownstone located in the Pilot Project Area in 1967 (73). He had previously lived at 110 West 96th Street with his wife and two boys (75). When he moved into the Area in 1967 it was a hopeful Area which would be integrated economically and racially. The kind of area he would want to live in (78). He was encouraged to buy a house in conversations with Col. Hunter and given a brochure describing the Area (80-82). He observed the Area and conferred many times with Mr. Lauria (83,84). He purchased 34 West 94th Street for $25,000 and put $35,000 in cash plus a mortgage of $13,500. His total investment including mortgages was $148,800. He gutted the building and made a duplex apartment for himself and six apartments for rental. He completed the job in 1969 and moved into the property and has lived there since (85,115,116). He has lived in the Area for 12 years (86). There was a great deal of optimism, people were buying brownstones, new buildings were being built, there was a very good racial mix, no problems until the summer of 1973 when things started to get rough (87). A bottle was thrown at him by a bunch of boys on his block. He saw boys removing coping around trees in the small park (88). The area was being destroyed. This was being done by black teenage boys who he did not recognize. He was robbed in the summer of 1973(90) by someone breaking into his apartment (91). There is graffiti on new buildings in the playground with things taken down and no one uses it now. Is afraid in the Area now and never was before (94). Sends his boys to private school because he cannot send them to public schools which he wants to do. Every child in the block who lives in a brownstone goes to private school (96). Took his son out of public school four years ago (97). Saw Mr. Prior knocked down and get a bloody nose at a Continue meeting and he moved out within a year or so. He saw Mr. Galperin's house across the street broken into - the wall broken in; and bars on the back windows in the Grossman's house broken (100). He saw people at the new sites sitting like derelicts drinking beer. People cannot walk on malls - closed up with fences and iron put around gardens so people cannot sit there any more (101). The things going on in the urban renewal area discouraged him tremendously (102). Purchase of his brownstone was the monumental purchase of his life (102). His children went

to public schools,Joan of Arc on 95th Street between Amsterdam and Columbus Avenues but later in 1969 he took his youngest out of the public schools (110-111). He saw teenagers gathered in the public plaza areas, graffiti and vandalism in public (114). He considers Hispanic black and white (119,2614-2617). There was a difference in the extent of graffiti and vandalism in the period prior to his signing his contract and after (129-130). He was shown a copy of the final plan for the rehabilitation demonstration of the pilot project and his property is included in the Pilot Project Area (2617-18). His contract required his written consent to any changes in the Plan and he did not give any such consent (2618-2621). Defendants' Exhibit Z Final Project Plan for the Pilot Area introduced into evidence (2621). The Pilot Project Area is between 94th and 95th Streets and Columbus Avenue and Central Park West and includes the brownstones but not Site 20 (2622).

JEROME LOUIS FINE
(133-170, 1285-1371, 1480-1548)

A psychologist resident of Area (133). Resided in West Side for 6 years prior to moving into the Area in January, 1969 (134). Investigated the area starting in 1963 or 1964. Bought a house in 1965 at 115 West 88th Street, a 4 story 18 foot wide brownstone 57 x 100, 3 story extension with a back yard. Altered property completely. Was a Single Room Occupancy Class B Dwelling before alteration (136). Occupies 3 floors with his family and rents one apartment; investment approximately $175,000 (137). Had many meetings with City representatives before purchased property from a private party but subject to the Plan (139). His architect handled the plans (140). He spoke to Hunter at the HDA office (141) and had eight or nine meetings prior to purchasing his brownstone (144). Investigated the Area before purchasing; saw new houses being built, other houses being torn down; spoke to individuals living in the neighborhood and proceeded with purchase and moved in. Has 3 children (147-150). Is chairman of Continue (Committee of Neighbors to Insure a Normal Urban Environment) (151). The purpose of the group is to see that the Plan is completed within the framework and philosophy at the time it was written. Speak to federal, state and local

housing people and legislators and inform individuals in the Area of what is happening. Continue has a large membership; 1000 families approximately composed of people who live in the Area, owners and renters (152-153). Continue was formed in the Spring of 1970 of individuals originally from Block Associations after the squatters came into the Area. (154) Met with elected officials at home of Dr. Arthur Logan at 121 West 88th Street in the spring of 1970; discussed the squatter situation and concern that the character of the neighborhood would change if the City allowed a higher loading of low income families and wanted assurances that the squatters would not delay demolition and construction of the scheduled new housing (155-159). The response was that it was a fait accompli and nothing could be done about it (159). Another meeting was with Commissioner Hazen at 100 Gold Street. A number of Continue people were at the meeting. They were still concerned that the City was changing the direction of the Plan by allowing the squatters to continue and increasing the number of low income families (160-163). Squatter situation first occurred in spring of 1970; there were a substantial number of them in approximately 10 buildings. Hazen had no comment except that it was under consideration (163-166). Another meeting occurred in September 1970. Present were Hazen, Walsh, Olinger and staff members and they discussed changes in the Plan (166-168). In the fall of October 1964 there were 2 or 3 meetings with Mr. Hunter and Mr. Luria; Haldenstein was the broker and showed him the neighborhood and several houses. He was shown pamphlets and large maps on the wall and was told that the Plan would bring about economic integration and would force ethnic integration. Was told that on the new housing there would be approximately 20 to 30 percent low income units except for a few which would be all low income (1286-1289). Was told that there was hope that the new buildings in the South Area would be completed by 1970 (1290-1291). Was shown Plaintiffs' Exhibits 10 and 13 and asked whether any changes had been made from the plans showed to him and they told him "no". Was informed of changes in 1970 after he entered into his contract (1294-95). Took title February 11, 1965 and maintained the house as a SRO for 2 years before renovation in 1967. Then in September 1967 started renovation which hasn't ended yet; moved in January 1967 (1299-1303). Before buying took a number of walks around the Area. The purchase represented a tremendous commitment emotionally as well as financially. Wanted to become a part of the community (1305).

A-363

FINE

In April 1970 squatters moved into 103,5,7 and 9 West 88th Streeet, the same street as his house. Buildings were City owned old law tenements being vacated for demolition for new construction. A few people were still in the building. There was great excitement, a crowd of people on the block gathered. He was threatened and told to get out. They got kind of rough about it. They continued to live in the building and are still there now. There is a constant turnover over the years. People have moved in and out. People were Spanish speaking, had a lot of children (1306-1310). In June of 1970 was threatened with a knife by a squatter moving in (1310, 1311). The block had an association that was very strong and before the squatters moved in had a block planting party for flowers. After the squatters came in there was a great deal of fear and tension he and his neighbors felt. Felt the group that came in were very hostile and the neighbors were very frightened. Found acts of vandalism: windows broken; garbage steeped in the inner hall of his house; large shrubbery removed in a manner which had not happened prior to the squatters (1311-1313). In May 1971 children threw firecrakers at his 2 year old daughter and wife. He chased them into a house on 89th Street where they lived. Same children threw rocks, shot beebees through his windows. Had to replace practically all windows on the back of his house. Had bricks and bottles thrown through front windows. On one occasion a bottle thrown through living room window on the table and cut a few people. Unable to use their back yard because children climb over fence throwing debris and harassing people. City had to put in a higher fence with a curved top. Innumerable incidents and feeling on the block is concern, fear and watchfulness all the time which is quite different than prior to April 1970. Frequent obscene language; garbage in front of 101 through 109 is constantly overflowing along with dead rats. It is an incredible mess. Saw a child knock over garbage cans in front of each of the brownstones. That is happening all the time. Does not use back yard now (1314-1317). Use of back yard diminished as a result of children congregating, throwing things over fence, cursing, harassing and making general nuisances of themselves so that it wasn't a comfortable place to be, until now lack of use is total - doesn't use it at all (1317-1318). On one occasion a beebee gun was fired into his window while his wife and he were in bed (1318-1319). Spoke to Bill Price, the organizer of the squatter group in April 1970. Price had organized OMI - Operation Move-in for the squatters. Most of the families came from the South of the Area - in the seventies

and the lower eighties (1320-1321). Formed Continue in May 1970 and met with City officials regarding completion of sites in the Area and effect of the squatters. Were told the City did not know when Area would be finished (1323-1327). Met with Deputy Mayor Aurelio October 23, 1970 and voiced concern for additional number of low income units and delay in completion and effect of the squatters (1331-1334). There was a demonstration of a few hours in front of Gracie Mansion by one hundred or more members of Continue on October 25, 1970. Chanted that they wanted the Area completed as originally planned (1334). There was a meeting of Continue on September 1970 in a private school on 95th Street attended by 300 people. There was an attempt to break up the meeting by 75 or more demonstrators from OMI. A large number of policemen had been called to protect the members of Continue. The demonstrators carried signs saying "Down with Continue". He also recognized some Strykers Bay people (1335-1336). At various times from 1971 to the present had conferences with a large variety of people in government, legislators, city, state and federal government people (1338). Met with William Green and in Washington with HUD in 1971 protesting the change in Site 30 to low income housing. Also met Senator Javitz (1339-1342). Did not appear at hearings on conversion of Site 4 because they were not well enough organized but at the Site 30 hearing there were 20 or 30 people from Continue. There were a number of planning board meetings and meetings with Strykers Bay where they agreed to disagree (1343-1347). Dr.Arthur C. Logan lived on the same block and was first chairman of Continue (1348). There were hundreds of phone calls by members of Continue. Overall objective was to seek information as to what was happening and he was indicating that Continue was steadfast in their belief that the area should be completed in accordance with the original plan and its amendment in 1966 and its philosophy and there was no need to change. (1349-1350) The original plan was to insure an economic and ethnic mix. The plan was to bring 2500 low income units into the Area. Were concerned that if more than 2500 there would be a turning point in the Area and middle income people would become disenchanted with the neighborhood and move out. They were also concerned with using 236 funding where the income limits were the same as public housing and with renting the larger units to low income families with many children which had the effect of distorting the 70-30 ratio (1350-1351). Mr. Lauria and Mr. Hunter spoke to him about matters in addition to financial

FINE

and architectural. They mentioned 2500 units of low income housing (1508-1510). He was told about the 2500 units by Mr. Haldenstein, Mr. Hunter, Mr. Lauria and other people in the Area he had spoken to (1537). He looked around the Area for several months before buying. He looked at all the blocks in the Area - made a careful investigation (1538). They were concerned with the conditions under which the squatters lived because of the threat of health hazards - vermin infestation and rats. Outside the row of houses 103-109 West 88th Street after the squatters moved in there were a large number of rats that were thrown out with the garbage. (1541-1542) Saw garbage being thrown into his back yard many times by children from the playground (1546). Defines low income persons as the same as the Housing Authority definition which extends up to $10,500 - $11,000 for large families (1547-1548).

ROGER STARR
(184-453)

Executive Director since 1958 of the Citizens Housing and Planning Council (CHPC), incorporated in 1937 concerned with housing (184-186).

Note - Since testifying on September 21 and October 9, 1973 Mr. Starr has become the Housing and Development Administrator of the City of New York.

Statement of qualifications (186-194,265-273,393,427-429). Description of the processing of the Plan (203-205,207,213,217-22). Description of the Area (205-207,208-213,223).

There was agreement among all concerned with the plan to increase the number of low income units to 2500 (220). During the period from 1963 through 1968 the neighborhood was improving along the lines the plan indicated (223). There was great pressure for change to introduce more elements of low income housing (224-229). Squatters introduced into the Area in 1970 or 1971 (229,230). Ruling allowing welfare families to be included in 70% middle income portion of new buildings created a situation which gave rise to the introduction of many multi-problem families

into the Area. It caused great alarm and fear on the part of middle income families who invested in the Area (230-232, 254-257,325). The Area is balanced at a very crucial point at this moment. There has been vast public and private expenditure in the development of a fine section of the City. The residents of the Area are worried and will move out if the number of multi problem families increases. Vandalism would increase, the value of public schooling would decrease and their feelings of safety would be less real. When the owners of houses become so frightened for their safety and so depressed about the economic future of the Area they flee as has happened in East New York, Flatbush and sections of the Bronx. The flight results in deteriorating housing and the disappearance of racially integrated areas (232-234). The phrase "tipping point" refers to an area of racial mixture which, when it is in equilibrium remains integrated, but when the minority population reaches a level at which a member of the majority moves out it is impossible to find a member of the same majority to move in and once that point has been reached the neighborhood tips over so that it no longer provides racially integrated living - it very rapidly becomes exclusively a minority group occupancy and that is what is described as tipping point. (234-235) As to the Area if there is an increase in public housing, especially under present circumstances of public housing management, it would present a serious threat of tipping the Area to the point where it will cease to be an integrated Area, except for the luxury fringe along Central Park West. (235,236,260) There was a commitment for 2500 units of low income housing in the Area and its immediate periphery (251,357,426). There has been a fear of crime in the Area which is rare for an urban renewal area where there has been such a vast investment of public and private funds (257). When we talk of tipping point it is not solely a question of economic balance or racial balance, it is both. In the Area there are a fairly considerable number of non-white homeowners and if the neighborhood tips they will get out along with the white people getting out. It will be a case of middle class people getting out. It is the infusion of low income families that will cause tipping (263,264,301-303). He disagreed with the standards set forth in the HUD Site Selection Criteria Study (Defendants' Exhibit B, 286) with particular reference to building low income housing in predominantly white areas such as Forest Hills as set forth in his article "The Lesson of Forest Hills" for Commentary magazine (Defendants'Exhibit C, 290,291,283-300). In the Area tipping would occur at 2500 low

income units depending on the concentration of low income units in a particular area. The 2500 units is critical because the people who made investments in the Area were told that would be the figure and relied on it and it was the figure arrived at by the governmental authorities in charge. The people who moved into the Area were not prejudiced - they wanted to live in an integrated area and they relied upon the number of units announced and performance of the Plan. The number of low income units which will lead to tipping varies from neighborhood to neighborhood depending on the community itself and the people in it. But in the Area the people there made large investments based upon the covenants in effect when they made their commitment and when the covenant is broken their subjective reactions, or prejudices if you will, leads to tipping. (300-307). If the Plan called for 5,000 units of low income housing the middle class probably would not have moved into the Area (307,308). If the plan called for 2500 units that is the number which dictates the tipping point because it is the covenant upon which people relied in making their investment in the Area. (308-312) Does not know the precise number of low income families because many low-income families can live in middle income units. Can only judge by number of units allocated to low income. The Area would probably tip if the 2500 figure were exceeded by about 5% (312-321). If Site 30 is constructed as low income housing it will cause the number of low income units to exceed 2500 (324). A low income family is a family qualified to enter subsidized public housing and is not a strict dollar figure because it varies in time due to increasing costs etc. as does middle income housing (324-328). The category of housing and neighborhoods is determined by income generally in our society (our money economy). It isn't precise in dollar amount but varies from time to time and area to area - people categorize their neighborhood, their friends and themselves roughly by income (328,329). There are really three criteria of tipping. (1) the gross numbers of low-income families; (2) the extent of community services indigenous to the Area; and (3) the attitude of people who might be persuaded by their own fears to leave (329-348). The Housing Authority standards have been lowered so that it is more difficult for them to screen or evict families for vandalism, crime and intense personal problems (348-350). Mollen and the Mayor made the commitment regarding 2500 units of low income housing at the time of the approval of the Plan in 1962 and everybody adopted that

STARR

figure - it became common gossip (353-357). Is sure that the Area will tip in view of the occupancy pattern in effect, the sentiment of the neighborhood and the change to a public housing project and this is based on his knowledge and observation of the Area. Areas have tipped in parts of the City and throughout the country where the socio-economic fears of people living in the Area are such as to drive them out. The tipping would occur in the entire Area (358-368). Found out many low income families were occupying Section 236 middle income units through welfare from Jules Sugarman, the City's Commissioner of Social Services (applies to Columbus Manor and Westwood House) (406-409,434-5). The change in Sites 4 and 30 from middle to low income housing was a major change in the Plan (425). Welfare families put into Area were not subject to a selection process by the Department of Social Welfare (426). The figure of 2500 units was a compromise among the officials and the figure of 2500 was both a minimum and a maximum and the commitment was made by the government officials in their official capacity. (444-481)

WALTER S. FRIED
(457-840, 863-964, 2336-2355)

Former Regional Administrator of HHFA; Member and Vice Chairman of the Housing and Redevelopment Board; Deputy Commissioner of the Housing and Development Administration; Member and Vice Chairman of the Housing Authority.

Statement of Qualifications 458-467, 565,566.

Description of the Area 467-475,484.

Processing of the Plan 475-562, 820-828.

The figure agreed upon among the City officials in 1962 at the time of approval of the Plan was generally accepted as 2500 units of low income housing (498-506). At the time of the Trinity contract in 1968 the purposes of the Plan were beginning to be achieved and that was obvious to anyone walking in the Area. (537,538) An issue arose sometime in 1971 about

increasing the number of low income units to above the 2500 figure. There was discussion about Site 30 which was occupied by squatters about changing it from middle income to low income housing (541-545,550). Subsequent to 1970 observed the situation in the Area and found that the momentum that was built up in the early years to achieve the goals of the Plan was being lost and it would not take much to start it deteriorating again (554,555). The City had a Site office on the site, the function of which was to give people information with respect to the Final Plan (568-569). Tipping point of an area is a point when people who have an option no longer desire to move into the area and private capital is no longer interested in investing in residential accommodations within the area (570). There are 2024 units of low income housing shown by Housing Authority records which taken with the figures in the McGregor affidavit would mean a total of in excess of 3000 plus the number of welfare would get a number far in excess of 300 units (574-581). In determining whether an area is at the tipping you must consider: there has been no investment in private residential construction - the co-ops are being converted to rental - the HDA has not sold a brownstone in over a year and are not being rehabilitated. (584-585) The white population in the public housing in the Area has decreased as shown by Plaintiffs' Exhibit 29 (587) from 52.4% to 46.1%; the black population has increased from 15.6% to 19.5%; the Puerto Rican occupancy has increased from 31.3% to 33.6%. This is a short time span and indicates a drift (587-589, 662-664). He also received many letters from people requesting apartments but where the apartment was in the Area it was turned down (593-594). From personal observation the character of retail establishments in the Area and immediately adjoining has declined. Many of the stores have moved; there is shoddy merchandise; restaurants are no longer the same caliber (594-596). When all of this is added to the increase in low income units the Area will tip so that it will not carry out the purposes of the Plan (597-598). There was a condition of urban blight in the Area before the Plan in 1962 which was changed in the period from 1962-1970 so that there was a reversal of the deteriorating trend and in 1970 from the time when the squatters came into the Area the improvement was halted and within the last year the Area is on the downgrade with a return to urban blight and to some extent a worsening (600-603).

FRIED

If the Area passes the tipping point it will either turn into a completely deteriorating Area or else there will have to be a massive infusion of government money or of private funds (603-604). Since 1970 there has been no progress on attaining the objectives of the Plan (608). With respect to integration the Area has been integrated for a number of decades and the purpose of the Plan is to preserve that by providing low income units. That was accomplished up to the 1970-71 period and as the number of low income units are increased above the amount accepted by a majority of the people and the socio-economic mix is changed the community will tip and you will end up with a ghettoized area (609-610). The immediate area surrounding the Area itself is deteriorating and any substantial number of low income units in excess of what was once accepted would constitute a pushing over, the tipping point (611-612). The figure of 2500 units was an approximate figure - not a maximum or a minimum (627). In Site 30 of the 160 units, 16 units are for the elderly but another 16 units are 1 bedroom apartments which can be used for the elderly if the need arises (654). Exhibit G shows 2730 units which excludes the perimeter public housing units (de Hostos, 830 Amsterdam and Douglas Addition) totaling 517 units and it excludes the rehabilitated public housing units of 236 units and the welfare families in the middle income buildings which if taken together would total in excess of 3500 units (688-697). There are no funds available for the construction of Site 4 as low income housing (704-705). He believes that relocated families are entitled to decent, safe and sanitary housing at a rental they can afford (subsidized if necessary) but not necessarily back into the same area because you cannot change the character of neighborhoods and improve them if you have the same concentration of low socio-economic people (714-715). He did not go along on the conversion of Site 30 to low income housing but was outvoted by the two other members of the Authority and the Mayor and the Board of Estimate wanted it. He merely presented it to the Board (715-719,726-733). The field office on the site was there for information generally and particularly for specific information to prospective brownstone purchasers and rehabilitators (736, 869-870). The staff was middle management (737). The State Division of Housing has agreed to take over the financing of two sites using Federal 236 subsidy (749, 804-807). Housing Authority ability to turn down tenants for occupancy, on ground other than over income,

are now limited whereas they used to be able to screen tenants more carefully. Based on the Escalera case they have guidelines but cannot do anything about them anyway so that pretty much anyone is admissible into public housing units and the same applies to continuance in occupancy (779-786). The figure of 2500 units of low income housing was agreed upon in a meeting with Mayor Wagner in 1952 which represented an increase from 1680 units to take care of relocatees. Mr. Badillo, Mr. Paul O'Keefe, Mr. Badillo, Mr. Mollen and Mr. James Felt were present at City Hall (830-839,864-868,889). The Mayor's statement of 2500 units of low income housing included the Douglass Extension and 830 Amsterdam Avenue as well as the public housing built on the school site at 93rd Street and Amsterdam Avenue (de Hostos) and the news release (Defendants' Exhibit I) stating the contrary is an error (913-915). When a change in plan occurs must have the approval of the City Planning Commission and the Board of Estimate (937). When the subject of Site 30 came up he presented his opposition in private to his fellow Board members but when he was outvoted he did not present his views further at the staff meeting even though he disagreed because was rare to have a divided vote and it would have been futile, particularly since the Federal government and the City wanted it (949-950,953-957). Does not know whether the Plan was formally changed before the City Planning Commission and the Board of Estimate (951-953). He reported on the books and articles he had read. (2336-2355)

ELIOT LUMBARD
(841-862,964-1161)

An attorney residing at Park West Village (841). Is a Trustee of Trinity School and President of Trinity Housing Company, the plaintiffs. Parent of a daughter now in tenth grade at Trinity and a son who went through the 12 grades starting in 1959 (842). Was Vice President of the Trinity Parents Association and Chairman of the Ad Hoc Building Committee of the Trinity project (843). There was a strong movement at Trinity to move the school to Pawling, New York on Route 22 where the Trinity-Pawling School was already located as a four year preparatory school. Due to the

deteriorating neighborhood there were many who wished to see the whole school facility in New York closed and the school moved to Pawling. (844-846) A move would have changed the essential character of the school. Many members of the Board and graduates of the school were emotionally involved and wanted to retain the old buildings. This controversy went back and forth for several years (846-848). Had discussions with City officials about the Plan for the Area, about Site 24 immediately adjacent to the school. The file showed attempts by the City to enlist Trinity as the sponsor of Site 24 (848-850). In 1963 contacted Milton Mollen at a Bar Association meeting and he indicated that the City would welcome Trinity as a sponsor. A letter was written at Mollen's suggestion over the signature of Glover Johnson of White and Case then Chairman of the Trinity Board. That letter was followed several months later by Plaintiffs' Exhibit 12 on December 18, 1963 also signed by Mr. Johnson (850-853). He studied the Plan. The decision was a very complex one for the school (855-857). Site 24 was zoned for 200 units of Mitchell Lama housing and had to work out a combination school and housing on a small site. Retained attorneys, architects and contractors to get estimates. Was made a Trustee in Spring of 1964. The project was originally to be a State Mitchell Lama project but negotiations were with the City Housing and Redevelopment Board on the Plan (857-859). At the meeting with the City in 1964 the school was concerned about financing the project (they would have to put up some $460,000 in front money) and they selected Brown and Guenther as architects since they had worked on the planning of the project and knew all about the Plan. They expressed concern about the solidity of the plan. Mr. Mollen indicated that the Board wished Trinity to participate and they could rely on the Plan being performed since it had the full support of the Mayor and the governing officials. They saw the large chart showing the designations and planning. They talked about the low income project across the street (966-972). The City officials said they were most anxious to keep Church groups in the Area and since Trinity was the largest it represented a leadership situation and they were very anxious to have them come in. They were told the project called for a fully integrated neighborhood economically, racially, religiously and in every respect and it was to that ideal Trinity committed itself. The total project dollars are over $9 million - about $3 million for the privately financed school facility and just short of $500,000 in front money with a 50 years mortgage for the housing

of $4,600,000 plus a private mortgage of $1,250,000 by the New York Bank for Savings. (972-975) It was an air rights job with the school below and housing above - it was the first of its kind and was extremely complex. It set the pattern for this type of construction and Trinity's willingness to undertake it was a great part of the inducement of the City to work with them (975-977). Originally they were to have 20% low income tenants under a "skewed" rent procedure and it was to be financed as a State Mitchell Lama (977-981). Trinity was concerned about what was going to happen to the neighborhood. They didn't want to "trade one ghetto for another." The officials stated that they shared the same objectives and had allocated definite income uses on each of the sites in the Area including the preservation of the brownstones (982-984) Trinity was going to have the right to choose its own tenants within the Mitchell Lama formula (985-986). The chart showed a description of the use (low income, middle income etc.) (987). The Trinity project Site 24 was in actual planning at least 4 years before construction loan financing could be arranged. The financing was switched from State to City and that change delayed the project and at a cost of $100,000 to the school. Had bids by contractors. Began construction before initial mortgage closing in order to beat out the rapid rise in construction costs. In 1968 Trinity put itself at risk for over $5,500,000 construction loan of the First National City Bank before the City was ready to close (987-992). Met with Jay Nathan and reviewed the situation as to what would occur and reviewed the development of the Plan (994-1000). Also made surveys as to marketability - economic feasibility, discussed tax abatement (1000-1005). There were many meetings over a long period of time. A brochure was prepared for presentation of the project to the City Planning Commission and the Board of Estimate in 1967 and 1968 and later a formal contract (Plaintiffs' Exhibit 14) was entered into on June 20, 1968 (1005-1010). Then construction began and took 18 months to complete and the buildings were occupied. Sulzberger-Rolfe, Inc. was retained as managing agent and they still manage the property. The 80-20 ratio was changed to 70-30. The 30% low income was arrived at by the skewing of rents (1010-1014). He was designated and still is president of the Housing Company. The building has remained almost totally rented since it opened. It was rented up with 30% low income tenants according to the City regulations and based on lists and screening of tenants. (1014-1018) Trinity is involved in the project on a non-profit

basis - there are no tax shelters available to Trinity. Some of the apartments are rented to Trinity faculty members (1019-1021). Keeps in constant contact with the project since its completion in December 1969. Lives about 7 blocks away and has a child going there. Has seen an increasing number of people drinking on the streets from paper bags and children being badgered by other children (1021-1028). The school had to hire a guard who stands at the entrance to the school - a uniformed guard and a police dog as a result of thefts and breakings into school property. Derogatory signs on the school. Witnessed in the summer of 1972 a large demonstration concerning Site 30 - 100 to 150 people picketed the school. He was given a karate chop-chop. There were many policeman. Walking in the Area is unpleasant (1028-1029). There has been a general deterioration in the neighborhood. All of the Trustees of Trinity participated in the decision to stay in the Area (1029-1033). The 30% requirement for low income housing is included in the contract Plaintiffs' Exhibit 14 (1035). A number of the members of the Trinity Board had real estate experience (1051-1053). Mollen when he said, in substance, you may rely on the Plan was referring to those big charts that were on easels with different colored descriptions of different categories of housing (1065). Learned of the figure of 2500 units of low income housing in 1964-65 (1091). They were willing to accept two public housing projects - one across the street and one cater-cornered on Columbus Avenue but they did not agree to allow the public housing to expand beyond that, as the City did in 1970 when it went through changing the plan (1120-11). Brown and Guenther were named on the Preliminary Plan as the planning consultants (1147). The lower school entrance is directly opposite the public housing across the street and the upper school entrance is immediately to the north of Site 30. (1147-1148). Trinity made its investment in Site 24 because (1) it was better for Trinity to do both the school and housing rather than let some commercial developer because of the complexity of the physical interrelationship of the two; (2) the housing is used to help get first grade faculty by providing good housing for them - there are 15 or so faculty members who live in the housing; and (3) Trinity wanted to make its contribution to the Area - If it was going to stay it should stay first class and do the best job it could. It has never been an economic real estate

investment but Trinity never expected that it would (1149-1150). Trinity undertook the school expansion so that it could increase its enrollment by 250 from 500 to 750 and the increased tuition received would pay for carrying the $1,250,000 mortgage on the school. If the Area deteriorates and as a result the school population falls off that would endanger Trinity's investment in the school expansion and the mortgage (1151-1153).

ALVIN C. HUDGINS
(1169-1285)

A black brownstone owner of 2 buildings, 27 and 29 West 94th Street. Lives in 29 West 94th Street since March 1972 (1169-1170). Lived in St. Albans, Queens for 18 years before that but that area was deteriorating and he wanted a better home for his family (1171-1172). His father lived in the Area, (51 West 94th Street) since 1965, and he watched the Area develop. (1173) Observed that Area was being integrated - a delightful rehabilitation Area. Started to acquire a brownstone in early 1970. Contacted Clark, a City employee in charge of this program in early 1970 late 1969 (1173-1176). Was assured that the economic mix would be maintained - and he regarded economic mix as an equalizer - he wanted a community he could rear his children in. Was assured squatters would be removed and development would proceed. Was assured the Plan would be completed (1176-1180). Buildings were in very bad condition. Went through the Area and the buildings shown to him by Hunter. Saw construction going on - saw the type of community he had been told would exist. That was late in 1969 or early 1970 (1181). The buildings were completely gutted. On April 27,1970 signed a letter of intent (Plaintiffs' Exhibit 35) and later a contract of sale (1181-1191). His architect prepared plans which were approved by the City (1187). Contract is subject to all the conditions of the contract between the Federal Government and the City (the Plan) but that contract was not annexed (1191-1194). Deed February 11, 1971 (Plaintiffs' Exhibit 36 (1200). Proceeded with rehabilitation which took 14, 15 months

and went into possession March 1972. Created 11 apartments in the two buildings. Occupied one triplex apartment for himself and his family. Tenants in other apartments are six white and four black families. There is a common entrance for both buildings (1202-1207). Invested actual $265,000, a $200,000 mortgage, the rest personal funds (1216). Took under advisement the question of moving into the Area 3 to 3 1/2 years. The factors considered were:- father lived in the neighborhood; being born and raised in the ghetto he has seen the product of all low income housing and didn't want to rear his family in a neighborhood that was all of anything - believes that people gain by living with each other and that is the American way and saw in the Area the model for the nation (1214-1215). Rented all apartments (1217). Has observed a change in the neighborhood since he moved in - has seen a great number of low income families milling about - disproportionate number on the streets in warm weather - an increase in crime - greater preponderance of drug use in low income areas - on October 17, 1972 apprehended a drug user who broke into his house and called the police - tenants have been mugged - daughter has had problems when she goes to store for her mother (1217-1220). Has 4 children, ages 22,21-19 and 13 (1221). Noticed an increase in the number of people under the influence of narcotics and alcohol on the streets. Objects of clothing hanging from balconies - graffiti, disproportionate to other areas of the City. On the basis of his observation the Area is deteriorating (1222-1223). Sends daughter to school via Central Park West and not Columbus Avenue. Sees a deterioration in the Area resulting from the low income people being concentrated in the new buildings rather than having them integrated economically throughout the Area (1224). Was told that the 70-30 ratio was to apply to everything new in the Area (1230). Is opposed to the stigma of putting all low income families in a single building (1240). Met with in addition to Clark, Joe Sherry, Bill Hunter and Joe Luria of the City (1244-1246). What he would really like to see is that every new building put up in the area being broken down to 70% middle income and 30% low income (1260-1262). His testimony on 70-30 mix applied only to new buildings and rehabs and did not apply to existing buildings which were unaffected by the Plan (1280). Gave no consent to the Plan either directly or indirectly (1281).

A-377

ARTHUR BROMBERG
(1376-1477, 1549-1641)

Real Estate Vice President of Sulzberger-Rolfe in charge of government financed housing. The firm manages over 200 buildings in New York and has been in existence over 60 years. Is supervisor - manage properties in the Area. Has been managing property in the West Side for approximately 17 years. With Sulzberger 7 1/2 years (1376-1377). Has lived in West Side all his life, now lives at 221 West 82nd Street (1377-1380). During the late 1950s and until the early 1960s the Area was becoming a low income type of ghetto, particularly between Amsterdam and Columbus Avenues and in the side streets between 87th and 97th Streets. It consisted of tenement houses which were becoming dilapidated (1380-1381). The buildings were quite old; were not being taken care of; tenants were of low income and didn't take care of the buildings very well; middle income tenants were moving and their places were taken by low income families (1382-1384). The same situation existed on the periphery particularly along Amsterdam and Columbus Avenues. Central Park West was not really touched by it. (1384-1386) Beginning in 1962 through the 1970s the Area changed; brownstones were renovated changed from single room occupancy to beautiful expensive housing; buildings were torn down and new buildings were put up in their place (1386-1389). His firm manage in the Area:- 7 West 96th Street, 12 West 96th Street, 41 West 96th Street, 95 West 95th Street, 70 West 93rd Street, 50 West 93rd Street, 100 West 92nd Street, 322 Central Park West and 5 West 91st Street - which are all large buildings in the Area. They manage 7200 units of Mitchell Lama housing in New York. Also manage a large number of large buildings on the periphery of the Area (1389-1394). Subsequent to 1962 there was an influx of middle income families coming into the community. Columbus Avemue became a boulevard, a truly revitalized area. People were not afraid to walk on the streets at night and the whole atmosphere of Columbus Avenue changed tremendously for the good over a five or six year period - during the period of 1966 - 1969 (1394-1395). That was the situation on July 20, 1968 when Trinity signed its contract. They manage Trinity House from its inception up to now. Trinity was the largest building on the south end of the Area up to that time. The outlook was brighter and brighter in 1968 and 1969 when Trinity started renting. There was no trouble renting (1395-1398). The Area was being occupied by more middle income

families and fewer lower income families than had been the case 10 years before (1397-1398). Description of the Area as it was in 1968-69 (1400-1426). Buildings were integrated economically, racially, socially, religiously and in every other way (1403). The squatters moved into the Area in the middle spring of 1970. They moved into housing on the east side of Columbus Avenue between 95th and 96th Streets, around 88th Street, 89th Street near Columbus Avenue. This caused middle income people living in the Area to voice a reaction to their office. They wanted to know if the Area was going to continue as originally set up with a 70-30 balance and whether the balance would be tipped at all. (1426-1429) 70 and 50 West 93rd Streets (Columbus Manor and Westwood House) received Federal Section 236 subsidy which reduced the rents (by virtue of an interest rate subsidy down to 1%) so that low income tenants - prior site tenants moved in. 30% of the apartments were turned over to the Housing Authority for Section 23 leasing public housing. As to the 70% every apartments had to go to a prior site tenant and most of them were low income, not middle income. It turned out that the building instead of having 70% middle income ended up with about 40% middle income and 60% low income (1429-1432). The Department of Social Services was willing to pay the rent for the Federal 236 subsidized apartments. (1432) As to Westwood House 3 tenants out of 123 pay the full Mitchell Lama rent, 85 receive 236 subsidy and 35 are Section 23 leased public housing. Of the 85 who receive 236 subsidy 23 are on full welfare and some of the balance receive partial welfare. Of those under Section 23 - 24 receive full welfare and 11 receive partial assistance. (1433-1434) The ethnic makeup is 41 Black, 49 Hispanic and 38 White. This breakdown was established from the opening of the building and remained the same. There was never a 70-30 breakdown (1435-1437). As to Columbus Manor of the 202 apartments 3 tenants are paying the full Mitchell Lama rents, 136 are under Section 236 subsidy, of which 50 are on full welfare and 63 are Section 23 leased public housing, of which 42 are on full welfare. There are 93 Hispanic, 69 Black and 41 White and 1 other. (1438-1439) Columbus Manor and Westwood House are a difficult management job. There is graffiti on the walls, halls, stairways. Halls, stairwells are not clean. Must hire an additional 8 man days a week to do cleanup work which would not be necessary in a new building

of an equal number of apartments. In Westwood hired an additional five man days to do extra cleaning. There is constant loitering in the hallway and in front of the building - hanging out of windows. Chairs have come off balconies. Dogs defecate on terraces and tenants sweep it off on to the street. There is air mailing of garbage out of windows. Have had to discontinue use of the community room because of noise from parties and fights. Men collect 4 barrels of empty soda and beer cans from the small park between the buildings not from trash baskets. (1440-1444) Found children riding bicycles in the lobby. Hall men have been physically abused a number of times. Two door men quit because one was threatened with a gun and one was threatened with a knife by tenants in the building. Graffiti on the outside of the building got so bad that they had to refinish the front with a concrete base paint to cover it all over. Garbage is just dumped in the halls. There is urinating and defecating in the elevators and stairwells. There is a tremendous amount of vandalism. Fire hoses have been turned on. All nozzles have been stolen. Elevators have been vandalized to the extent of having rails, buttons and lighting fixtures removed which has impaired the functioning of the elevators requiring repair men frequently. There is vandalism in the garage to cars in Columbus Manor. There is an abnormal amount of drug traffic in Columbus Manor. In one raid they found $16 million worth of drugs in someone's apartment (1444-1448). Wrote letter to the police regarding crimes in the building (Plaintiffs' Exhibit 39) mentioning burglaries, muggings, junkies and pushers dealing in the building, teen-agers congregating in front of the building and complaints by tenants that response from police department is minimal (1448-1452). During the summer of 1972 had a lot of problems with people throwing things off terraces and wrote letters to tenants about it (Plaintiffs' Exhibit 40 and 41) (1453-1456). The Area has been on the downgrade since 1970 where it was on the upgrade before based on visual observation of the Area and the type of tenancy for re-renting. People who come to rent apartments go away when they look at the Area because of the large congregations of people in front of the buildings. They make comments - ethnic slurs. The prices of coop apartments have dropped over the last 4 or 5 years to a greater degree than the City generally (1457-1460). These conditions will affect the rental of

BROMBERG

apartments in the future because people who can afford the rentals will move or go elsewhere to look. The area is tipping which means that a majority of the middle income people coming into the Area are now going in the opposite direction. More havenots are taking the place of the haves and it is tipping to the havenots. From his experience in real estate when that happens it will lead to a ghetto (1461-1463). The apartments at Columbus Manor are one and two bedroom apartments so there would be a few elderly families. They would be in Westwood where there are some zero bedroom apartments (1589). When there is a Federal 236 subsidy the rent is reduced by about one half (1599). Received a letter from a group of tenants in Columbus Manor complaining about a tenant who threw various objects off his terrace - 2 chairs and a bicycle and wrote a response (Plaintiffs' Exhibit 42). Rents in Mitchell Lamas are coming in at $110 per room per month now and they would not be marketable in the Area. (1623) Statement of Income Limits of Section 236 housing on Westwood House (Plaintiffs' Exhibit 43 id) and Columbus Manor (Plaintiffs' Exhibit 44 id) (1639-1641)

EPHRAIM FRANK GARCIA
(1642-1663,1673-1680)

Superintendent of Columbus Manor, 70 West 93rd Street for 2 1/2 years, started about a year and 9 months after the building was opened and is still there (1642). Is at the building 24 hours a day 7 days a week. He lives there with his family, with his wife and two daughters 3 years and 7 months old. His working hours are 7 A.M. to 4 P.M. but he is available at all times for emergency situations (1643-1644). This is a new building with 203 apartments completed about 3 years ago. Has 4 men, 5 porters and himself (1646). Tenants allow children to play in the hallways and children dirty the halls; there is graffiti on the outside of the building, on the stairwells and staircases. On concrete walls must paint over graffiti - being done now. Tenants leave garbage on the floor, do not throw it down the incinerator chute. (1647-1648) Garbage is thrown out of the terraces and the windows including bottles, beer cans. You can see half a dozen eggs splattered all of the place. The place is infested with roaches (1649). In Apartment 11B tenant Teorres returned to Puerto Rico. Had refused to allow the exterminator in.

A-381

GARCIA

When she left the infestation was so bad that they used 4 gallons of insecticide and after the painters came in there were still roaches. It took about 2 weeks to exterminate (1650). There are a lot of children in the building - as soon as the building is cleaned it gets dirty again. Gum wrappers, soda spilled, candy wrappers, things of that nature. Has seen urine in the halls.(1651) Apartment 9B tenant Diaz an arrest was made by the police; Apartment 22G Torres has a son who gives them a hard time - he came at him with a knife and he (the superintendent) used a baseball bat to subdue him. There were wild parties - people drink and start a riot or a fight. (1652-1654) Were quite a few burglaries in the building in the beginning - they would take television sets and radios and a refrigerator was stolen from Apartment 11B (1655). There is vandalism on cars in the garage. Cylinders are ripped off the walls, wires are switched so the doors can't open. They break into the trunks, steal spare tires, break into the car itself and steal what is in the car. There is much noise from parties and loud arguing. There is drinking of alcoholic beverages everyday in the summer in front of the building (1656-1657). They congregate in front of the building and block the entrance. They threw pieces of iron down the incinerator on three ocasions which break off the teeth of the machine and require it to be repaired. (1658) Had to put gates on roof doors to keep out the children where they would drink, smoke whatever all hanging around where they didn't belong. They broke the roof doors. The hose and nozzles were all cut on the standpipe line on alternate floors so that if the fire department had to use them they would be unusable. The rails on the elevator were taken off. (1659-1660). On the call boards of the elevators somebody lit a fire or put a cigarette lighter in it and melted it down partially. The phones were ripped out in the elevators every time they were put in and there is no phone (1661). The frosty screens and the fixtures on the elevator are taken down. The cylinder is ripped out of the wall controlling the garage doors and the door will keep going up and down and eventually break. The chain on the door has broken several times. Light figures and bulbs are constantly being taken down and must be replaced. We install baskets but they take the baskets too (1662-1663). Tenants seldom use the playground. They stay in front of the building. The building has been getting much better (1675). Some tenants just don't take care of the building and others do. Same things happen as a year ago only less frequently. Has improved by 40% (1679-1680)

RAPHAEL SIFONTE
(1666-1673, 2257-2295)

Lives 627 Summit Avenue, Jersey City. Superintendent of Leader House. Started when it opened in 1971 until February 2, 1974, apt. 17F with wife and 5 children ages sons 17 and 13, daughters 10, 7 and 5 (1667-1668). Worked 8 to 5 Monday through Friday but at building most all of the time - 24 hours a day 7 days a week (1669). Has 4 doormen and five helpers plus an assistant superintendent. Born in Puerto Rico - in this country 9 years. Moved out of the building because of drugs - his children were afraid. (1670) Detectives and the FBI broke into apartment 21G (1671). Moved out because of the drug situation. He has five kids and he doesn't want to make his kids drug addicts. Knows there were drug addicts because he was in the building 24 hours a day. Saw them in the lobby shaking hands and transferring the drugs one to the other. (2257-2259) The first raid by the police with respect to drugs occurred in October 1973. The detectives came to the apartment knocked on the door and rang the bill but nobody answered so they took crowbars and stuff like that and broke down the door. He found the door off its hinges on the floor with the cylinder completely broken, the door was bent. They arrested everybody in the apartment. They were undercover policemen who came to see him first. They had shotguns, revolvers. (2260-2263). There were two more raids. One was three days after Christmas 1973. They asked him for the master key and he refused and told them to ring the bill which they did and arrested two people in the apartment. (2264) There was another raid either in January 1974 or December 1973. The cops came down with a tenant in handcuffs. The witness stated to counsel before taking the stand that he was afraid to give the names and apartment numbers of the tenants because of the possibility of reprisals against him (2265-2266). Has observed people drinking alcohol and under the influence of drugs in the lobby and in front and in back all over. There were complaints about parties - fights in the hallways, the lobbies, the front of the building on weekends between tenants and visitors. Most of the time it was just loud talk but on one occasion they went at each other with a knife. Once in a while he saw blood on people (2267-2270). Saw five, six, seven men going into an apartment where a woman lives alone and she has six or seven more with her with men travelling in and out. Knows there is prostitution because the people comment in

A-383

SIFONTE

the building what is going on - tenants talk and refer to this particular apartment. (2271-2272) In the summertime people congregate in front of the building after four o'clock and into midnight and one, two and three in the morning. They bring radios and tape recorders in front of the building and start drinking and dancing (2273-2274). People have dogs in the apartment and do not take them down. They do everything in the apartment - they smell terrible. He doesn't go in the apartment because it is do dirty and smell. (2275) People refuse the exterminator who comes once a week and have roaches. Has about five apartments like that. They are occupied by a large number of people. For instance a studio apartment is for one person - sometimes we have three or four persons in the apartment. There are about 10 of those (2278-2282). There is graffiti on stairways, floors and outside the building.(2282-2283) As to the apartments with dog dirt he reported that to management and they send letters to the tenant. They send three letters then they go to court. The undercover detectives for the Police Department were working in the building for a long time. (2287) Things he reports to the management company are big things like a shooting. (2295)

A-384

EDWARD SULZBERGER
(1682-1784

President of Sulzberger Rolfe manage 9 properties in Area and 15 buildings on the periphery and a total of approximately 50 buildings on the West Side (1682-1685). These are 90-95% high rise apartment buildings with elevators and some have doorman service. About 1% are commercial rest are residential. Has been in real estate business 41 years (1686-1687). Have converted buildings from rental to coop (1688). The Area prior to 1962 was subject to general disinvestment and depreciation - it was getting worse all the time. Buildings were worthless, they were sold at prices that continued to depreciate (1688-1689). Had general experience in real estate since 1933 as a rent collector (1690). The primary factor was vacancies in the Area. There was a general exodus of middle income families out of the west side into the east side and to the suburbs which created vacancies which were gradually rented to low income and welfare tenants. Substantial numbers of undesirables moved into the rooming houses and the side streets (1691). A change occurred in the period from 1962 to 1970. There was a substantial increase in investment capital into the Area. Values started to firm up and increase. The area was turning around. They were cooping a substantial number of buildings. The new construction and the exodus of low income, relief tenants and socially undesirable families was responsible for the turning around. Socially undesirable means addicts, prostitutes and others who had been patronizing the Area. There was also the program of rehabilitation of the brownstones and rooming houses. The turning around in values was due exclusively to the Plan (1695-1698). Beginning in 1970 the Area is starting to slide back and it is difficult to sell property in the Area. This is due to an increase in the number of relief recipients and public housing tenants. There are buildings in the Area occupied by individuals (squatters) who broke into the buildings and continue to live there.(1699-1700) With the increase in the number of welfare tenants and public housing tenants there has been a tipping in the Area so that in the buildings they manage the 70-30 ratio is upset and there are only 30% middle income tenants so that it is getting impossible to rent to middle income families (1700-1701). At the time the Plan progressed they arranged for a 70-30 ratio for new buildings developed under the Plan. Originally planned

A-385

SULZBERGER

2500 units of low income housing. The 70-30 ratio is violated as in the buildings they manage Columbus Manor and Westwood House. Doormen have been threatened by tenants with weapons. Parents allow children to play in the halls and stairways and lobbies and harass the help. Must employ more help to keep buildings clean. Graffiti on walls and interiors. Difficulty in renting garage space - tenants congregating in front of buildings - vandalism such as cutting fire hoses, urinating in elevators, scratching the elevator doors, throwing furniture from balconies, noise - loud playing of radios and record players. When there is an excess of public housing and low income tenants in a building it deteriorates and it has an effect on the Area as well as the building (1702-1709). Tipping point is where we bring in more public housing, low income individuals into an area and the middle income people leave the Area because the low income families are the only people one can rent to. This in turn will lead the Area back to where it was before - that same ghettoized strip both east and west of Columbus Avenue. (1709-1710) Almost the entire area of the Bronx is tipping most noticeably in the South Bronx (1711).

(MRS.) LISA KOLB LIEBERT
(1784-1989,2038-2045)

Brownstone owner 113 West 88th Street - law student and housewife. First became interested in a brownstone in 1964. (1784-1785) Looked for about a year - knew people who lived in the Pilot Area. Austin Haldenstein was her broker. Looked at 15 houses and actually bought one before she bought 113 West 88th Street. Walked around the neighborhood and spoke to people. (1786) Read the booklet. Knew the neighborhood because she grew up in it and visited her family for many years. Met with Hunter and Luria. Put a deposit down on 113 West 88th Street in the summer of 1965. There was a substantial amount of renovation going on. They walked the neighborhood and observed the stages the Plan was in. Saw new construction (1787-1788). They were shown the designation of particular sites and discussed in great detail what would go on each site. Went over the plan with Haldenstein, Hunter and Luria and discussed financing (herself and her husband) (1789). Luria and Hunter told them that the site on the northwest corner of 88th Street was intended

A-386

LIEBERT

for a combined school and housing; that the site behind their house on 89th Street would be renovated into a larger playground and on the corner would be one of the very few luxury housing sites (1792). At the later meeting they discussed the availability of FHA financing and the relocation procedures (1795). Put up a binder in August of 1965. The property was a 4 story 17 foot brownstone which was then a rooming house. Purchased it from a private owner but were advised that the plans were subject to review by the City. (1796-1797) They saw what was happening in the neighborhood and it led them to believe that it was substantially improving - pleasanter and the buildings were being repaired - that it was going to be an integrated neighborhood essentially middle class. They knew there was going to be some low income housing - there was a public housing project in existence on the corner but they believed that it was going to be a middle class racially integrated neighborhood (1798-1800). They were told there would be a mix of 50% middle income, 25% low income and 25% luxury. They only heard the 2500 figure in 1967 or 1968 (1801-1802). They decided to make two rental units in addition to their own triplex. Her husband who is a psychoanalyst was going to use it as an office - but they rented it out instead. He decided not to use the office because conditions next door were too unpleasant; the neighborhood was too difficult for patients to walk through particularly late in the evening. Used a conventional mortgage and no tax abatement (1802-1805). They continued the operation of the house as a rooming house for 18 months. They paid for the cost of relocation and proceeded with the plans for the renovation which took about a year. They dealt with Mr. Van DeVelde and he arranged for relocation. The relocation took 6 months, the rehabilitation took 6 months and they moved in July 1967. (1805-1809) They spent in total about $120,000 on relocation, acquisition and renovation. (1815) They moved in June 30, 1967 and subsequently rented the other apartments. There was a frequent turnover of tenants (1815-1818). The buildings adjacent to them were "holding sites" which are old buildings which are planned to be taken down and are being used to rehouse those tenants left on the site until the new housing is ready. (1818-1819) In the early spring of 1970 the adjacent sites were virtually empty with only a few apartments left occupied - the windows were tinned when they moved out. The squatters came about April - they occupied the house immediately adjacent to them. She observed the squatters moving in. They were organized by a Mr. William Price whom

A-387

LIEBERT

she knew. (1819-1820) She organized a block meeting (she was chairman) at Mr. Price's request. The block members were extremely alarmed and had some unpleasant encounters with the people moving in. They tried to alleviate the anxiety on both sides. They discussed the problem as a whole but did not reach much agreement. They said they would not call the police but they would not support the squatters. There was a good deal of hostility and apprehension. They subsequently had a meeting with Representative Blumenthal at the home of Dr. Arthur Logan (1820-1823). Mr. Blumenthal invited Father Brown over their objections. Borough President Sutton, Senator Ohrenstein, Councilman Weiss also came. The meeting was very informal. A group of people arrived to picket the residence. One of the signs said "The poor have the right to live wherever they want." There was a great deal of chanting and yelling particularly at Mrs. Logan who had been active in the Civil Rights Movement with Dr. King. The pickets leaned on the doorbell and it was impossible to talk. The door was blocked. The people at the meeting were very frightened and agitated about it. The meeting broke up after a good deal of haranguing. From that time on the relationship between the squatters and the other low income people really deteriorated. There was marked hostility. It was impossible to walk by without some kind of sneering comment. The buildings continued to deteriorate. There was a great deal of transiency - people moving in and out. The maintenance of the buildings has considerably worsened. There were incidents of fights, harassment, and hostility between people in the tenements and the brownstones. (1823-1825) When they moved in tin was ripped off and people moved furniture and appliances in at night. The people were Black or Spanish and were poor, moving in with very few possessions. (1826-1827) The atmosphere was very tense and anxious and extremely frightened by the picketing and concerned about the children who played on the street. There were a number of incidents - children being pushed - there was a great deal of anxiety about what was going on. (1828) She has a son 12 and a daughter 8. Her son was afraid to walk home because he was regularly accosted by children. He could not walk down Columbus Avenue. He was afraid to go alone. He had a number of incidents walking down Columbus Avenue and she had to go to the bus to meet him each day coming home

A-388

LIEBERT

from school. (1829) She has almost been hit by bricks thrown from the top of the basement next door. Bricks were repeatedly thrown into their back yard. Was almost hit by a garbage can as two men sitting in the middle of 89th Street were having a fight. The situation has gotten progressively worse. In the last few weeks she has not been able to walk from her house. There is garbage everywhere. She literally walks through garbage, coffee grounds, chicken bones, all kinds of things. She complained to the HDA office and after she brought the maintenance man to show him the situation she was accosted on the street by the superintendent who asked her what she was doing complaining about the garbage in the street. They had a very loud fight. She complained to the police about an illegal car repair in the street which led to another loud fight. She has not been able to walk from her house to 86th Street without seeing groups of men sitting on every stoop and store fronts drinking liquor and beer (1830-1831). The street is strewn with broken glass and garbage everywhere. Last night she had a drunk weave up to her and make an obscene remark. That happened several times and once when she was with her daughter. There came a time when she decided to get out of the neighborhood (1832). She was in error on the closing date - it took place on 9-28-1964 not 1965 (1846). The people on the block got together in the spring of 1972 and hired a guard - the guard has been continued by the City. The funds were raised by the West 88 Street 100 Block Association. (1847-1849) The guard was necessitated by the general anxiety and increased sense of hostility. There was an addiction services youth center on the block which contributed to the problems. There was one occasion when there was a loud altercation outside of her window and she called the police. There was some threatening with knives and a group of kids coming at each other from opposite ends of the street but the police appeared and broke it up. Conditions are much worse during the summer. Hydrants are opened continuously flooding some of the houses. There is constant activity until the very late hours two, three in the morning. There is much noise and dirt and garbage from the empty lot along with blaring radios and constant activity. (1850-1852) In 1971 they put their house on the market for six months. This was done as a result of a number of meetings one of which had been broken into, broken up, picketed and one of their members had been assaulted. It was very unpleasant and frightening. They

A-389

LIEBERT

became extremely discouraged about the progress of the neighborhood. The hearing had been held on Site 30. (1853) They had no buyers and they were told that construction would be resumed within a year, so they decided to give it a try for another year. But in the summer of 1973 things got worse. She was alone at home for one week in August. Things got extraordinarily chaotic. Every hydrant was open and mobs of children were on the street. The street was strewn with garbage. There were always young people gathered until 2:00 and 3:00 in the morning playing bongodrums, having parties, breaking bottles (1854). After about a week she "had it". There were a number of altercations and she decided that they absolutely could not wait any longer. The buildings were getting worse, the life in the street was increasingly chaotic. It looked like the Plan would not proceed and with the conversion of Sites 4 and 30 to low income housing that we would end up with very low income housing and one site after another would be redesignated from middle income to low income housing. She did not want to live as a small group of relatively affluent people surrounded by low income housing. In addition she felt her children were not safe so they put their house on the market irrevocably to sell it. (1855-1856). Gave the house to Haldenstein to sell it. Had no buyers until February. Not one person came to look at the house until February. Only two people came to look at the house. They sold the house to the only person who appeared to buy it. Contract signed last week; closing June 30. Sold the house to a single black man - Earl Monroe of the Knicks (1857-1858). She worked on the housing committee of Strykers Bay and worked on getting statistics of the allocation of units in the Area. (1859-1863). Investigated the number of welfare families who occupied units in the Area, in addition to the 30% allocated to low income housing which was a violation of the agreements. They held a meeting with Deputy Mayor Hamilton in December of 1971 and he said that there were additional welfare families which violated the 30%. This was because of the Tompkins Square Decision that no person could be refused an apartment because they were on welfare (1864-1868). They had a length discussion with Hamilton and he agreed that the welfare tenants should be counted towards the 30% and it was a violation of the agreement to include them in the 70% middle income part (1868-1872). In the spring of 1972 she received a memo from Mr. Carroll given to her by Mr. Chrystal of the Comptroller's office. She went over these

A-390

LIEBERT

figures with Crystal on a building by building basis (1873-1882). The information as to welfare families in addition to the 30% low income units given to her by Crystal was as follows:- Site 24 Trinity House 2 additional units; Site 14 Independence House 15 additional units; Site 1,2 and 3 there were 13 additional units; Site 13 West Side Manor 15 additional units; Site 6 Central Park Gardens 15 additional units; Site 10 Columbus House 17 additional units; Site 21 Columbus Manor 53 additional units; Site 22 Westwood House 29 additional units; Site 7 New Amsterdam 4 additional units; Site 5 Tower West 9 additional units; Site 20 Leader House 46 additional units; Site 17 Coop 8 additional units; Site 11 Goddard Towers 1 additional unit; Site 16 Columbus Park Towers 4 additional units; Site 8 RNA House 3 additional units; Site 12 Jefferson Towers 5 additional units; Site 31 St. Martins Tower 5 additional units; Site 36 Turin House 6 additional units.(1882-1889) Marked in evidence as Plaintiffs' Exhibit 46. The allocation of 25% low income and 25% luxury that she was informed about in 1964 was only of the new buildings to be built. The 30% of low income units in the new Mitchell Lama projects came much later (1893-1896). Was informed that of the total new units built 2500 would be allocated to low income families (1904). Prior to the squatters coming in there were Christmas and Halloween parties with the relocatee families living in the holding sites but after the squatters came in the bad atmosphere led to a discontinuance of them (1910-1914). Since the squatters came in the brownstone owners have been identified as opposed to the interests of low income people. The community has been polarized - there has been a deliberate and concrete exasperation of the anti-brownstone feeling among low income families (1915). Sold the house to Earl Monroe for $145,000 and taking all costs into consideration will have made a profit of between 10 and 15,000 over the past 10 years of owning the house (1928). She did take the position that the squatter movement should be stopped and the City should forcibly remove the squatters and that no more squatters should be recognized because the construction should go on according to Plan and the squatters would delay it (1959-1962). The allocation of 25/50/25 was changed subsequently and all the luxury (fully tax paying) units were eliminated (2042-2043).

A-391

JAY I. OLNEK
(1994-2027, 2045-2128)

An attorney and partner in Hampton Management Co., a real estate management firm. Is connected with Starrett Bros. & Eken and Starrett Housing Corporation (1994). Manage Leader House, Tower West 65 West 96th Street and The New Amsterdam 733 Amsterdam Avenue in the Area. Also manage about 10,000 units in New York, New Jersey, Massachusetts and Connecticut, primarily residential. Most of the units managed are in New York City. Some are luxury middle income, 236, Mitchell Lamas and Urban Renewal. Most are new high rise residential buildings containing several hundred apartments. Office is in 2500 Johnson Avenue in Riverdale (1995-1997). Have managed all three buildings in the Area from the beginning. Leader House renting began in 1972. In the renting of the 3 buildings a series of meetings were had with Commissioner Coniglione and Strykers Bay (1998-1999). Discussed question of priority of relocatees. They held up the renting of apartments until all relocatees had been contacted. Strykers Bay wanted to be certain that all relocatees were placed before anyone else was rented apartments. (2000-2002). The rents in New Amsterdamwere too high for low income families so there was only the 30% low income units under Section 23 leasing with the Housing Authority. They allocated the larger apartments to the low income group (2002-2010). Leader House was all 236 so the rents were much lower ($36 per room per month)whereas the other two were $70 per room per month at full Mitchell Lama rents. They wanted the larger apartments for the 30% low income units (2011-2012). They wanted the two and three bedroom and were not interested in the one and no bedrooms. They took 41% of the rental rooms for the 30% portion which amounted to 44% of the number of people involved. (2013-2016) 56 welfare families were rented apartments in the 70% middle income portion of the building because the Department of Social Welfare was willing to pay the Section 236 subsidized rent for the middle income units. Schedule of figures on Leader House (Plaintiffs' Exhibit 48) (2018-2022) Schedule of income limits (Plaintiffs' Exhibit 53 id) for 236 housing for Leader House (2046-2048) Memo from Kerr HDA dated January 8, 1973 conceding violation of 70-30 ratio in Leader House, Columbus Manor and Westwood House and insisting that the correct mix be restored. (Plaintiffs' Exhibit 54) (2049-2051). Saw graffiti on the side of the building and some painting on the hallways. Saw dog excrement on the staircase. Saw excessive people coming into the building

A-392

OLNEK

and congregating in front of the building (2058). There were complaints made as to crime and dope addicts. Wrote letter to police (Plaintiffs' Exhibit 55) about people coming into the building to buy drugs and an excessive going to a number of apartments for prostitution (2059-2061). Police surveillance of the building started with his letter to the Police Commissioner. They have assured him that the building is being watched closely. Also shifted doorman to guard service (2061-2063). Time schedule for rental of Leader House (Plaintiffs' Exhibit 56 id) (2064-2066). In the renting of apartments in Leader House they were renting to relocatees from other areas than the West Side (2099). The number of welfare families in the 70% middle income portion has been reduced from 56 to 49 families (2100-2101). Superintendent Sifonti asked for a transfer out of Leader House because he was concerned about his children - he wanted to get them out of there (2114). There were complaints that there had been a number of muggings in his building (2120). The present public housing income limits are approximately $500 a year less than the limits under which they rented the Section 236 units in Leader House (2123). The tenants of Leader House wanted the doorman to stand between the two doors to the building alongside the buzzers. The doorman refused. Then he asked the doorman to keep a log book for visitors but the doorman wouldn't do it. However, it is now being done (2124-2126). They are using regular income limits in the Section 236 units in Leader House which are about $2000 less than the exception limits. (2126-2127)

A-393

CHARLES H. TENNEY
(2028-2037)

Judge of the Federal District Court for the Southern District of New York. Deputy Mayor of New York from April 1961 through January 1964 and City Administrator. Prior to 1961 was Corporation Counsel. From 1961 to 1964 was a trustee of Trinity School (2028). Has no recollection of Mr. Lumbard reporting conversations with Mr. Mollen. The Trustees were interested in the Plan and in the housing (2029). Minutes of February 2, 1966 (Plaintiffs' Exhibit 52 id) show discussion of housing. There may have been an understanding or an assumption because it was the concern of the Trustees at the time. He recalls that Mr. Mollen's name came up because he knew him. Also attended a meeting on February 1, 1967 and the matter was discussed. It was discussed on a great many occasions. (Plaintiffs' Exhibits 49 id and 50 id) (2030-2033). Attended a meeting on May 1, 1968 (Plaintiffs' Exhibit 51 id). The Trustees were concerned with the nature of the redevelopment and what it would do in the Area. Has no recollection of the school contemplating move to Pawling but he knows the school was concerned that the Area would be appropriate to conduct the affairs of the school (2033-2037).

AUSTIN K. HALDENSTEIN
(2129-2242)

Real estate broker and has also acted as consultant and appraiser. Specialized in the Area for approximately ten years. (2130) Operates under his own name employs 9 people at his office at 225 Central Park West since October 1, 1973 - prior to that was at 18 West 86th Street. Before starting his own firm in the spring of 1971 was with Kempner Corporation at 60 East 42nd Street for seven years. (2131-2132) Prior to Kempner worked for National Downtown Services. Is a director of the Chamber of Commerce. Was president of the 86 Street Block Association. Is registered with the Police Department as a block watcher on 82nd Street where his office is located. Is a member of Continue, the Committee of the Historic District Council, the Real Estate Board of New York, of which he is a member of the Housing Projects, the Sales Brokers, the West Side and the Legislative Committees of the Board (2133-2135). Prepared a list of the brownstones in the Area which he participated in as broker (Plaintiffs' Exhibit 57) (2135-2136). Sold 64 properties some were resales. Is a licensed real estate broker since 1966 or 1967 and a salesman since 1963. (2137-2139) Secured and canvassed properties for sale. Then advertised these properties and when he received responses he would invite the prospective purchasers to his office and give them an orientation about the Plan and the Area. Made a study of the Plan and informed prospects what the terms and conditions would be if they did acquire a brownstone (2140-2141). Obtained information from the City's field office at West 89th Street. (Plaintiffs' Exhibit 58) is a public notice given in 1964. Was broker only for private sales - there was no broker for City sales. (2142-2144) He explained what was to happen in the Area. Went over stages of the development and discussed the Pilot Project 95 to 93 Street. Also discussed rehabilitations that were under way. Walked through the Area with prospects. (2145-2147) Discussed the fact that the area would be socially balanced and the allocation of low and middle income housing. Discussed builders and architects. In the main prospects were young families - professionals - doctors, lawyers, musicians. It was to be a balanced integrated Area. During the period from 1963 to 1970 real estate brownstone values increased approximately 25% each year from 1965 to 1967 and 10 to 15% from 1967 to the end of 1969 (2148-2150) Expenditures made

during this period would range from $100,000 to $200,000 for acquisition and rehabilitation (2151). During the period from the early 60s through the end of 1969 we had an improving situation on the blocks - more brownstones were renovated or upgraded; the blocks would look better; there would be more optimistic feeling by the residents and old buildings were being demolished and new buildings were being constructed (2160). Everyone had a feeling of optimism that the Plan would be fulfilled as originally outlined and adopted - there was a welcoming of new residents into the completed apartments. There were to be 2500 low income families to be brought into the Area and it was to be integrated (2161-2162). A change occurred in 1970 with the coming of the squatters. At that point there was the beginning of uncertainty about what was happening to the Plan - about progress of the Plan (2162). There was some doubt about the commitment of the City to move along with the sites. There was a change in feeling among the brownstone owners from an optimistic feeling to a feeling of bafflement and possibly discouragement. As a result market values decreased possibly 10 to 15%. (2162-2164) During the period between 1969 and 1970 business almost came to a halt and the business we did was at a proportionately lower price level than the year before. Haldenstein directed to make analysis of his records and write a letter which will be furnished as part of his testimony (2168-2169). The letter dated May 22, 1974 states that an analysis of the sales annexed to the letter substantiates his testimony that there was an increase in values in the Area from 1964 to 1969 and that a change occurred in 1970 when the squatters came in. There was a sharp falling off in the number of sales beginning in 1970 and continuing through 1973. His opinion is that potential purchasers would no longer undertake the large risk of renovating a property because of the adverse conditions in the Area beginning in 1970. Sellers of renovated brownstones were asked to take a loss of from 10 to 20% or more on resales and they are not willing to do so. In 1970 people who had invested in brownstones talked to him about selling them. Some people people became so depressed with the situation that was developing in the Area that they talked to him about selling and some resales did occur. One of the reasons for selling was uncertainty and unhappiness as to what was happening - including the squatter invasion. The alteration of the initial formula was one of the reasons. (2169-2170) There was a change in the stated formula of the moderate income units with different people - low income families coming in. There were problems - reports of petty crime, meetings, demonstrations - (2170-2173). In the early sixties the completion date for the

project was 1970. It is way behind schedule - it is still (in 1974) not completed. The first stage was completed relatively close to schedule; then we started having problems in the second stage - dates were not being met; sites were not being vacated and demolition was not taking place. The third stage was even further behind where there was no action on many of the sites (2174-2175). There were a maximum of 50 brownstones offered for sale by the City (2182). Approximately 300 brownstones were sold from the early 1960s up to the present time as part of the Plan (2196). The figure of 2500 units of low income housing was the figure being used at the Urban Renewal Office and it was also in printed material (2207). He advised purchasers during early stages of the Plan that they could "get in on the ground floor" and by that he meant that the Area was blighted on the downgrade. Here was a program to lift the Area - to improve it. It was an opportunity for a purchaser to make a commitment to something for the future. In addition properties were available at moderate cost (2208-2209). Participated as broker in the sale by the Lieberts - on original acquisition and on resale. They were very unhappy with the development and the progress of the Plan - they were uncomfortable - they didn't feel secure (2209-2213).

A-397

ABE ROTH
(2242-2253)

Managing agent with Sulzberger-Rolfe 3 years; manages Columbus Manor and Westwood House since September 1973. Was in real estate business as owners, general contractors of residential buildings for forty years. Managed properties for New York Savings Bank for 25 years (2243-2244). Visits the properties once a week to see superintendent - hear complaints take orders. Also receives correspondence and calls at the office every day. (2245) Takes care of delinquencies in paying rent. Gets a delinquent sheet every month. Issues dispossesses when tenants in arrears for the current month plus one prior month. There are 25 dispossesses pending on both buildings some for periods in excess of two and three months. When he took over the buildings there were up to five months of arrears (2246-2247). Has had at least half a dozen evictions. Tenants complain about noise, people playing radio or hi-fi too loud, halls and incinerators are dirty, children playing in the halls and congregating in front of the buildings, garbage in halls and out of windows, vandalism, cars and garage doors being broken, break windows, roaches, graffiti on the exterior, halls and stairwells (2248-2250). Expenditures for cleaning and maintenance are in excess of normal because it requires more materials and manpower to clean them (2250). This is his first experience like this in all his years regarding people not paying the rent (2252).

DINAH SOURS
(2304-2334, 2357-2399)

Born in England but has been in U.S. for 22 years. Husband is a physician specializing in psychiatry and is a child analyst. Lives in a rehabilitated brownstone in the Area at 120 West 88th Street (2304). Has 3 children ages 15, boy and 2 girls ages 13 and 11. Moved into Area in September 1969. Lived in Woodcliff Lake, New Jersey before that for 5 years in a private house which they owned in a white upper middle class very dull suburban community. It was 45 minutes from New York. Left there because her husband was tired of commuting and they were discouraged with the community. It was not a place where they wanted to bring up their children. They were not getting a realistic view of life in the world in this type of community. Had heard about the Area from friends. Liked New York City very much for the cultural activities and the other things it had to offer (2306). Another reason they wanted a place where there was more racial integration and various economic levels and all different types of people. Investigated the Area through friends who had already bought houses and were very enthusiastic about it. (2307) They visited the Housing and Redevelopment Board office and studied various papers and visited the streets and spoke to their agent at great length. (2308) Were shown only 1 building (120 West 88th Street) by Austin Haldenstein. He told them about the rehabilitation of brownstones and the rebuilding of the corners. He told them about the 70-30 ratio in the new buildings (2309-2310). The building was a rooming house - very run down, very bad condition. It is 14 1/2 feet and 4 stories high with no basement or attic (2311). It has a back yard which is a garden now. Purchased the building in December 1967 and began renovation in 1968. Relocated the tenants (2312). Hired an architect and proceeded with renovation (2313-2314). They live in the 3 top floors with six rooms. On the ground floor they rented the front room and her husband used the back room as an office but later they converted the front room into a playroom for the children, her husband treats as part of his office. So he used the entire floor for his office. (2315) But he is not able to practice there because there are too many drifters and people hanging around the neighborhood who frighten the patients coming in. About 6 months ago they got an infestation of rats on the ground floor and they did a

great deal of damage to the house. When they moved into the house it was a pleasant street. They had an active block association and the buildings across the street were almost empty and the street was quiet and pleasant (2316-2317). A change occurred in the spring of 1970 when the buildings opposite were occupied by the squatters. They moved in one evening. There was great noise and confusion. After they moved in began to get more and more of these unpleasant people hanging around the corners. The garbage situation is very bad. There is a lot of purposeful irritation and annoyance from them. They blow bugles and play music very, very loudly. She and both her daughters have been spat on by people standing on the stoops. They have thrown garbage at them. They grab at her daughters. Last fall three fellows grabbed hold of her youngest daughter and her friend and told them they were going to rape them. They burst into tears and were let go. She called the police but they said they could do nothing about it. Last week she was walking along and a man came and tried to grab her between the legs. She hit him and he just laughed and walked on (2318-2320). Every single day her daughters have to put up with lewd comments and people grabbing at them. It is just a sort of daily abuse we take in the neighborhood. These acts are done by the men who live in these buildings and stand on the stoops and corners. Her son goes to Trinity School and one daughter goes to Fieldston and the other to Alexander Robertson (2321-2322). The lamp has been ripped off the front of her house and they had a paving stone thrown through their front door after a meeting (2323). A window has been broken in back. Last summer a rock was thrown and landed in the chair she was just sitting in. There is a lot of walking across the roofs and last fall some men tried to break into the skylight and lowered a television antenna. Chased them away. Things are thrown at the house and windows broken (2324-2325). There is drinking and what appears to be drug transactions with money being pased. Called the police (2326). Have seen that five or six times. There is a great deal of noise from radios, singing, playing tambourines. She frequently calls the police after 11 P.M. They blow bugles, they shout, play their radios loudly. Has called the police one or twice at 3 A.M. (2327-2329). The children turn on hydrants and shoot the water dangerously at passing cars. (2330)

A-400

SOURS

Is active with Continue. Had a meeting in October 1970 which was disrupted - they hit a man who was a cripple Mr. Prior and knocked him down. The police came and took people home (2332). The rear of the first floor apartment was to be occupied by her mother but because there was too much noise and dirt and unpleasantness in the neighborhood she decided not to live there (2357-2358).As long as the City goes ahead with its original commitment they would like to stay but if they do not will consider moving. They are waiting to see what is going to happen. (2358-2359) There are many brownstones that are renovated and some that are not - they are still rooming houses. (2366) They get the feeling of purposeful irritation now which they did not experience before the squatters moved in. They were pointed out as enemies who were against low income housing - which is not true. (2380) They are waiting to see whether the City performs the Plan before deciding whether to move from the Area. The original promise of the City was to have 2500 units of low income housing and the 70 - 30 business. The five squatter buildings are slated for demolition and if the City goes ahead with the Plan, with their original promise then it would be the type of neighborhood that we planned to move into originally - without the types of problems they have experienced recently. (2383-2384)

A-401

MR. PAUL FRIEDBERG
(2400-2460, 2755-2796)

Lives at 116 West 88th Street, a brownstone that he rehabilitated. He is an urban designer, landscape architect and educator for 15 - 16 years (2400). Has worked on Urban Renewal programs and plans in various cities throughout the country. Worked on the Pruitt-Igoe project in St. Louis and more than 25 others. Is considered an expert in the field of Urban Design (2401-2402). First had contact with the Area in 1962. Was recently married and desirous of finding a permanent location in the City. Looked over the Area. Had been familiar with it because he lived on 82nd Street in 1956 and found it to be an interesting area and therefore desirable. It was a diverse area and had a fair amount of amenities and facilities. It was adjacent to Central Park, had good transportation and was within his income bracket (2403-2404). Investigated other areas of the City but where the prices were similar the relocation problems were monumental. When he decided to move into the Area he consulted a number of brokers. Started to work for the City in the Area in 1963-1964. Looked into the terms and conditions of the Plan. (2405-2407) Then decided to buy a brownstone. In 1962 purchased 116 West 88th Street and held it in its original condition for four years from 1962 to 1966; relocated the tenants and then renovated and occupied the property himself; is still there. Spent about $70,000 on acquisition and rehabilitation. (2408-2410) It is now a 2 family house with one rental unit. It is 15 1/2 feet frontage 4 stories.(2411) Worked as consulting architect to architects in the design of 11 projects during the period beginning in 1963 or 1964 up to the present time. Renovated 2 brownstones. The first one was too small and bought 125 West 88th Street in 1963 and lived there until 1966. Sold the building subsequently (2412-2414). Knew the Area was mixed, at the time of moving in it was predominantly low income. Accepted that with the expectation that the Area was going to eventually become a mixed income area with a reasonable ratio of low income to middle income. That was important due to the experience he had acquired in his profession. It was substantiated by his own personal investigation with City Officials whom he knew professionally and personally. His personal commitment was to move into an integrated area and to stay in the City. Reviewed the situation with City officials. He knew from experience

A-402

FRIEDBERG

that in such communities you have to have a lower percentage of low income in order to maintain the middle income in the area. Once he got the commitment he decided on this Area. (2415-2416) Studied the question of integration. Was told there was going to be an income mix and the City was committed to that. Was offered tax abatement and an opportunity for relocation. So his expectation was a community of racial and economic mixes within a reasonable proportion. (2417-2419) Became active in the implementation of the Plan. Spoke with officials in an effort to avoid an overconcentration of low income in a particular area such as between 90 and 94 Streets. Felt that the low income should be disbursed. (2418-2425) During the period up to 1970 the Plan started off and moved very rapidly, it was extremely encouraging. There was a great deal of excitement, we went ahead with renovations. We brought in friends and proselytized them. The rapid implementation of the Plan led them to believe they made the right decision. There was an interest in the quality of design. The City was relocating tenants and boarding up the units. This was extremely encouraging until the time these buildings were opened up again. (2425=2426) New buildings were being built, progress was being made at a reasonable pace and at a reasonable design level. They were of the opinion that the provisions of the Plan were being accomplished up to 1970. (2426-2427) After 1970 the whole project slowed down. Was able to observe from a professional point of view that everything was slowing down - the time it took to process plans. The other thing was the opening of the old buildings to new tenancy - the squatters. It appeared that the commitment of the City was not as strong. Began to feel that the Project was being abandoned or else put on a side or back burner. Prior to the squatters there was reciprocation in terms of help. We were all living there and there was no animosity. But in 1970 when the squatters moved in there was a great deal of fear on the part of homeowners that the City was abandoning its original commitment. That fear was translated into political action along with the demonstrations at Strykers Bay on the part of those interested in maintaining the squatters. That polarized the situation. There were two different economic and ethnic groups and in this case it was made political (2428-2431) They were accused of being bigoted and anti-low income. They were in fact not

A-403

FRIEDBERG

but were merely attempting to get the City to perform on its commitment. All of this had a demoralizing effect on the Area. Many people began to question whether they had made the right decision and began to look for alternatives. The first alternative was to press for their rights and they formed Continue to do that and the other alternative was to look for other places to live. Subsequent to 1970 the general environment of the Area has deteriorated. (2432-2435) There is garbage on the street. It is frightening to walk on Columbus Avenue. The stores are boarded up and there is no light on the street. In a building across the way the railing was missing for 6 months. (2136-2138) In the lot on 87 Street the City built a playground. It became a garbage pit, children breaking glass and throwing rocks from construction sites into adjacent yards - his own included. Noise goes on until 3 or 4 in the morning - bugle playing, firecrackers, yelling and screaming and singing, radios blaring. This occurs almost every night during the summer. (2436-2441) There is a great deal of congregating on the street. The real problem is the hostility and the political conflict between the two groups. His children cannot play. They are pushed around, called names. The level of hostility creates an unpleasant situation. (2442-2445) Have given consideration to selling their house. They have been waiting literally for the outcome of this case. They do not wish to live in a predominantly low income area. If the neighborhood continues as it is presently going and no improvement occurs, he will look for another place to live. (2445-2446) Favors the construction of the entire Area in accordance with the social and economic mix which is critical to the success of this Area and if the mix is not kept the Plan has the possibility of not working. (2457)

A-404

DR. FRANK S. KRISTOF
(2477-2488, 2504-2682)

Statement of Qualifications. (2478-2488)

First became acquainted with the Plan in December 1960 and continued until November 30, 1968. (2504) His activity on the Plan consisted of analysis of the market strength of the Area and the financial structure of the housing companies. Examined the Area, walked it. (2505) Discussed the Plan with City officials. Prepared material for presentation before the Board of Estimate. Continued to follow the situation in the Area after he left HDA. (2506-2507) Did have contact with Site 4 while with Urban Development Corporation and expressed dismay at the proposal. (2508) "Tipping point" is a sociological concept. It describes a set of conditions in an area at which the normal relationships that have existed in the Area begin to change markedly. The change involves the rapid ingress of new families and the departure of existing families at a rapid pace so that the characteristics of the neighborhood change rather radically within a short period of time. Usually it is from a given economic group to a lower economic, socio-economic group. Change is measured by the rate at which people move into or out of an area (2509). Urban Blight describes physical as well as social conditions and are related to economic conditions in the Area. Blight means deterioration and poor maintenance, including streets, garbage removal services, police, the literal ability of people to walk safely through the streets. (2510) There are also involved the frame of mind of the residents. When urban blight is applied to a neighborhood it indicates that it is losing its desirability as a place for normal families to remain happily and contentedly. The elements of Urban Blight are issues involved in the development of the Area. Urban decay is a synonym for urban blight. Urban design is a set of physical conditions which attempt to cure urban blight. (2511) The quality of the built environment is the judgmental aspect of the whole discussion and is involved in the Plan. (2512) Hypothetical question as to the existing situation. (2513-2514) The Area has passed the tipping point. To the extent that the Area begins to provide for more than 2500 units of low income families you are beginning to endanger the marketability of existing and additional housing to middle income families that will discourage them from remaining and will cause them to move out. The tipping point would be exceeded

A-405

KRISTOF

and the terms of the Plan which call for an integrated Area would not be accomplished. The investment of hundreds of millions of dollars would be wasted in terms of creating an integrated community. (2515-2516) Hypothetical question regarding the completion of the Plan as presently contemplated by the defendants. (2516-2519) The proposal for developing the Area that the defendants have set up would certainly discourage new middle income families from moving into the Area as well as discourage the existing middle income families from remaining in the Area. Based on his experience in doing market analyses all over the State and City of New York he believes that conditions will have been created which will not retain the improvements in the viability of the Area that had been reached in 1970. Future developments will affect its desirability for middle income families which are sorely needed to retain the long range viability, health and stability of the Area. (2519-2520) The concept of tipping implies a set of undesirable neighborhood conditions, deterioration occurring in the Area. The neighborhood conditions involve the sociological characteristics of the people who live in the Area and those who are moving out as well as the physical aspects: the condition of housing, whether it is being maintained or whether it is deteriorating; the condition of the streets - the litter and the garbage in the streets; the feelings of the people as to safety in the streets - conditions of fear; police and fire services; dirt and litter; people lounging around on the streets; delinquents from school or unemployed engaging in illegal and dangerous activities; drug addiction, robbery, muggings, assault and murder. (2522-2525) Tipping involves racial and economic changes. In our society low income families today are predominantly blacks and Puerto Ricans. Racial characteristics is not a generic part of the definition. It is just a correlation of low income with racial and ethnic characteristics at a given time. The tipping concept is more an economic thing than racial - economic as a proxy for the differences in the social attributes of the people, it is almost a class distinction rather than racial or economic. (2526-2530) The economic and racial distinctions are correlative - they are not causative. The crucial information in determining tipping is the relative economic makeup of the community involved. (2526-2531) In considering the Area the relevant community would be the Area itself and the surrounding community - which would be Central Park West and Riverside Drive,

72 Street to 105 to 110 Streets. Definition of low income is as follows: For a 1 person household $4000 per annum; 2 person household $5500 per annum; 3 person household $6800 per annum; 4 person household $7800 per annum; 5 person household $9000 per annum; 6 person household $10,000 per annum; 7 person household $10,500 per annum. Between 35% and 40% of the families in the relevant area are low income as defined above (2531-2535). The Area is in balance now; it depends on what happens from here on in. (2538-2539) There is a greater danger of tipping if the individuals moving into the Area are low income white than middle income black (2545-2546). Older families are regarded as more stable and safer families in general. The tipping problem comes into sharp focus where there are low income families of 2 or 3 persons who are young - also broken families where there is a mother and several children where there is less parental supervision (2547). Where people have distressing habits they offend portions of the community to such an extent that the community will actually tip because the people who are offended will want to flee from the site. The failure to reckon with these factors will defeat our whole purpose here. This is an overwhelming factor; it is mountainous and equal to any other factor. In most instances it exceeds any of the normal factors that are seized upon by well meaning people (2547-2551). The racial statistics go down the drain if the economic factors are so drastic as to result in tipping in and of themselves (2644-2645). Tipping is relative and depends on the basic strength of a neighborhood. The stronger the economic and social structure of that neighborhood, the more it will resist tipping and the more changes in racial characteristics it can withstand before it does tip. The Area in general is strong - one of the strongest market areas of New York City (2649-2654). Mitchell Lama rents were relatively stable in the period from 1960 to 1963 at $30 per room per month. In 1964 the limit was $35; in 1965 - $40 and over; in 1966 it was hitting the $60s; in 1967 - $65 and $70; in 1969 $75 and $80;1971 $78 to $82; 1972 - $82 to $88; 1973 - $90 to $100 and today between $110, $120 and $130 for 1974startup. (2656-2660) These rises in cost resulted in the necessity to employ Federal Section 236 subsidy which had the effect of cutting the rents in half. As a result straight Mitchell Lama rents are no longer marketable in the Area. The fully tax paying projects were eliminated

from the Plan because they could not be financed by the FHA Section 220 program and the community was not enthusiastic about fully tax paying high rent housing. (2660-2664) The use of the Capital Grant Program for low income families was limited to 20% of the units because it was felt that if they put too many low-income units in the buildings you would not get middle income families to rent in the same building (2664-2665).

MILES L. OWENS
(2553-2613)

Lives at 65 West 90th Street called St. Martin's Towers. Moved in 3 years ago April 1971. Lived at 301 West 57th Street and 80th Street and Riverside Drive before that. (2554, listed as 2553 by error) The apartment is a cooperative which he owns (2555). Is an engineer. Has a wife and two children. During the last 3 years the neighborhood is going down the drain. (2556) As to Site 30 the City promised that this site would be middle income and now they want to turn it into low income. Wants to raise his kids in a neighborhood with other kids but now there are too many low income families in the neighborhood. His kids go to public school but the school is going down the drain. (2557) The City represented that this would be an integrated neighborhood and they are reneging. There is crime in the streets. They strip cars. Women cannot walk sometimes. Agrees that where there is no love crime and contempt is bred. His kids will not go in the street and open a fire hydrant and say "To hell with everybody else." Hopes his children think about other people's property from the way he brought them up. He is not poor - he is middle income. He plays with the kids and the neighbors. (2558) The educational level of P.S. 84 is going down the drain because they are not bringing in middle income families - they are bringing in poor families. You can't send your children to Joan of Arc because there is no mix there. The City is reneging on his neighborhood. There was a car accident and as soon as they took the people to the hospital they started to strip the car. His kids wouldn't be down there. The City should go ahead with the Plan it promised. Bring in more middle income families. You are chasing him out of the City. Does not want to live with filth and crime with the guys standing around because they are poor and you are bringing them in from all over the City. You are dumping them on the upper west side. Grown men standing on the street. They should be out working. They don't want to work. The City is taking care of them. We had two fires in the neighborhood. A kid was smoking pot on his stoop; they break windows; they bother people on the street; they drink beer; they make excessive noise at night with bongos and bugles and parties; they sleep in abandoned buildings; they sell dope and pot on the street; there were three murders a couple of years ago maybe 50 feet from him. The upper west side will be a ghetto in 10 or 15 years because the responsible people are moving out. He is

going to pack up and run and you will have a ghetto there. If you mix the neighborhood as you planned you will show the world that other people can live together. White people want to live in a mixed neighborhood in the upper west side - now the City wants to chase them out. Spread the poor all over the City - don't keep dumping the poor on the upper west side because he will pick up his family and run. He wants his kids to grow up to know other kids. He doesn't believe in all one. It's not the way God made the world. But the City is reneging - it is chasing out the middle income (2559-2561). He saw a plan of the Area that it would be an economically and racially integrated community and that Site 30 would be a middle income building. He relied on a form, a map and a folder. (2565-2566) Site 21 is going down the drain because they have put welfare recipients and poor people in there. He knows because he is active in the neighborhood. (2568) If all buildings in the Area were like his building then he would be happy. It is a mixed building. (2572) The squatters do not work; they are not paying rent; they are not bringing in money to support themselves; they are living in deteriorated slum buildings with no windows and window frames, floor ripped up, sometimes no heat or light, stairwells ripped out, some of the worst building conditions you can imagine. (2591-2592) The education in the schools is bad. He is active as a volunteer in the school. He walks around the school. The kids are poor. Every second word is a cuss word. He sees people picking the garbage from the cafeteria. He sees the kids mark up the school. He is on the bathroom committee. The kids don't flush the toilets. They don't use the urinals. They wet the toilet paper and throw it up on the ceiling. There is graffiti all over and broken toilets. (2606-2608)

WILLIAM GAYNOR
(2702-2754, 2796-2833)

An expert witness.

Statement of Qualifications. (2702-2709)

The State makes a contribution to pay 1/2 of the City's cost of net project costs on urban renewal projects. (2710) Financed Stephen Wise public housing in the Area. Also participated in the financing of Sites 1, 2 and 3 under State Mitchell Lama. (2711-2712) Financed the Capital Grant subsidy program for low income families. Also administered the Housing Finance Agency which financed State Mitchell Lama projects through the sale of tax exempt bonds. (2713-2715) The Trinity School project was originally scheduled to be financed by the State but it was changed later and was City financed. (2715-2716) The State is also about to finance Sites 41 and 44. The State Housing Finance Agency was created under his Administration and became the prototype for similar agencies throughout the country. It has financed over $5.5 billion of construction. (2717-2719) The Plan was processed and approved under his jurisdiction as State Commissioner (2719-2720). Was chairman of a task force on Housing and Urban Renewal for the Federal Government and an Adjunct Professor of urban planning at Columbia University from 1959 to 1960. (2720-2721) Made an analysis of the Area and the Plan for this case - to determine the conditions and the programs in the project Area and to determine whether change was being effected in the original and subsequent concepts of the Plan. Made a study of the Area. (2722) The project was conceived as largely fully tax paying and that was gradually changed to reduce the preponderance of conventional housing. At the time the project was originally planned there was gradual deterioration with white occupants moving out and there was an inward migration of black and Puerto Rican tenants. (2724) There were originally in 1962 1630 units of low income housing planned but that was later changed to 2465 units and in 1966 that was increased to 2559 units. (2726) There was a commitment to produce 2500 units of low income housing. (2727) The plan initially was progressing quite satisfactorily but slowly. With relocation requirements the process of redeveloping an area is not easy. The developments at the northern end seemed to give it strength - it was a solid development. Their subsidies became available through the State's Capital Grant

program and Federal programs of interest subsidy as well as public housing leasing. (2728) The concepts of the Plan were being accomplished from 1962 until 1969. The re-developments were completed. There were new high rise buildings - there was rehabilitation completed - the conservation efforts seemed to have been successful. The Area seemed to me to be on the rise. There was compliance with the Plan. (2731) A change occurred in that situation after he left in 1969. The change came about through the use of public housing leasing for 30% of the middle income housing units. In addition the Department of Social Services accepted the middle income rents for welfare recipients and in the case of three buildings the middle income projects were tenanted, not only by the 30% low income families as agreed but of the remaining 70% - 70% of those were tenanted by low income families so that 80% of the total units were tenanted by persons of low income. (2732) It was never intended that the low income tenancy should dominate the middle income housing. (2734) He saw a general downgrading of a relatively new housing development. He saw poor appreciation on the part of the tenants of the new housing opportunities. The impact on the 20% middle income families was devastating. He would expect many of the middle income families would exercise their right to move. (2734) He was told that there was an influx of low income families into the Area beyond the number contemplated. (2739) It was apparent that there was drastic overcrowding of the Area and severe enrollment problems in the public schools. From walking through P.S. 84 and Joan of Arc it was apparent that integration had not succeeded. Observed very few white students relative to the number of black and Puerto Rican. Discipline seemed rather lax in the schools and in the housing projects. (2741) Saw loitering, litter and a disregard for the educational and residential facilities - saw graffiti, loitering and litter. (2742) The northern part of the Area was solid and well developed but as you proceed southward it starts to deteriorate in the type of commercial establishment and as you approach the southern end it becomes a substandard Area. It is shabby and a slum. (2743) Analyzed the figures shown by Defendants' Exhibit S and the Addendum Plaintiffs' Exhibit 45 id. which showed that the revised program for 2500 units of low income housing had been exceeded in the occupied units and the units under construction. The number of low income units would amount to 3758. (2746-2747) There is a

GAYNOR

profound change and a definite thrust towards occupancy by low income families. There is a trend towards a majority of low income families and that is not consistent with the basic concept of the Plan. Where a development is occupied in the main by low income families, middle income families will exercise their right to reject that particular selection and will go elsewhere into a neighborhood that is more to their desire. Experience has shown that the exercise of free will will probably result in the rejection of a unit or an area that is not integrated socially and economically. (2750) That is the possible thrust of the present programming of these housing units. This project could become a slum or a ghetto or a deteriorated Area. (2751) If those who tenant the new projects are the same as the three projects he observed which are becoming slightly substandard and over a period of years can become substandard, the other developments might also become substandard and in that case we jeopardize practically the entire urban renewal project (2752). If he were to take command of the project he would insist on screening standards, that there is a reasonable integration of the tenancy of the new projects in accordance with the initial understanding, that the operating budget contain funds to accommodate the needs for security, and that the job is done reasonably on time. (2753-2754) Could get no information as to the school problem. Had inquired of the Housing and Development Administration and the Area Office of the Housing and Development Administration and they refused him any information on advice of the Corporation Counsel. (2935) In his conversation with Bromberg he told him there were 80% low income families - not 80% welfare. He said there were 50% welfare families. (2951) State Commissioner of Housing had nothing to do with relocation. (2957)

A-413

HARRY FODEN
(2836-2878, 2878-2917,
2917-2921, 2921-2922)

He resides in Winchester, Massachusetts and is employed by Arthur D. Little, Inc., in Cambridge, Massachusetts (2836). Arthur D. Little, Inc. is a large research and management consulting organization and Mr. Foden has professional responsibilities for assembling professional disciplines to conduct studies for Arthur D. Little's clients (2837). Arthur D. Little, Inc. has approximately 800 professionals in its employ representing a wide range of technical, scientific and social science skills. He is a senior staff member in the Public Affairs Center of Arthur D. Little, Inc. (2837). He has been organizing teams of professionals of many disciplines for the purpose of doing case studies of clients problems for approximately 20 years (2838). He has extensive experience with housing and urban development projects (2839). He has general responsibility and extensive experience in Housing and Urban Development issues, having been involved in these issues for at least 20 years (2838-2849). This experience included conducting a $750,000 study for the U. S. Department of Housing and Urban Development concerning large scale urban rehabilitation in 14 cities; work relating to the preparation of an environmental impact statement for the John F. Kennedy Library in Cambridge, Massachusetts; a project for the Worcester (Massachusetts) Housing Authority; housing projects in Hartford, Connecticut; together with work in approximately 15 cities under the Model Cities Program of the Housing and Urban Development Department (2839-2849). He has had responsibility for cases involving environmental analysis of housing issues and has been involved in the preparation of several environmental impact statements under the National Environmental Policy Act (2848, 2846) in St. Louis, Los Angeles, New York and Massachusetts. In his work he has analyzed such social and environmental issues as congestion, the type of individuals who may inhabit an area, the character of an area, the attitudes of individuals in a given area toward change

and toward the type and quality of housing which is provided for them, vandalism, crime, rehabilitation of decaying structures (2842), community dynamics and the social problems surrounding the renovation of buildings (2844-2849). He testified as to his familiarity with, and the meanings of environmental issues in an urban context, including congestion, attitudes and fears of individuals, neighborhood stability, site alternatives, urban blight, neighborhood stability, social issues (2849-2865, 2898, 2920). The elements of neighborhood character included the personal perceptions of people to their neighborhood, friendship patterns, local shopping area, attitudes toward mobility and additional income, ethnic and social associations, patterns of neighborhood leadership, perceptions of what is happening in the neighborhood, and fears and prejudices (2849-2852). Fears may be built up which may be completely irrelevant to facts and this represents a subjective feeling which knowledge of facts does not easily change. These attitudes contribute strongly to the stability of a neighborhood (2852). Techniques for the study of neighborhood characteristics includes analysis of statistical information, on-sight or in-field surveys, informal discussions with community groups and discussions with community leaders (2853-2855). He feels that it is professionally necessary and responsible to address issues which are recurrent in the minds of people in the community and that work is vulnerable professionally if this is not done (2854-2855). He defines tipping point to be that point at which people who live in an area feel that the neighborhood character has changed to the point that they no longer wish to remain in the neighborhood, that it is a subjective type of attitude and that individuals will use a whole variety of factors in their individual evaluation as to whether they think a neighborhood has changed so significantly that it is no longer suited for them. These factors would include the quality of the schools, the kind of children the family's children are associating with, the kind of local shops available, existence of vandalism, death or bodily injury, cleanliness of the neighborhood, congestion, condition of properties in the neighborhood, property values, and racial, economic and class factors (2855-2857). Urban blight is a condition of deterioration due to change in social and economic conditions in an area (2860). He testified as

to the importance of controversy and as to the need for attention to the attitudes expressed by all segments of the community (2874-2876). Where a project is controversial he would give particular attention through surveys, discussions and other methods to understand the reactions and feelings of the residents and that there are commonly accepted methods of analysis for addressing these issues (2874). He also testified as to the existence of methods and techniques for studying the environmental factors listed above (2853-2875). Neither defendants' Exhibit E (environmental) or defendants' Exhibit B (site selection) considered alternatives to Site 30, urban blight, neighborhood stability, community attitudes and fears, and social issues (2857-2865, 2876) regarding the proposed project. In answer to a hypothetical question based on the facts of this case, he stated that a full environmental impact statement should have been prepared (2865-2872).

A-416

ROBERTA BRANDES GRATZ
(2971-3076)

She is a newspaper journalist employed by the New York Post for 11 years. Reports on housing (2973). Also has reported on brownstones and urban issues. Lives at 25 Central Park West since December 1973 (2974). Before that lived in a brownstone at 124 W. 87th Street from January 1970 to December 1973. Signed contract to buy in the summer of 1968 and closed on January 24, 1969. Was well aware of the Plan and Area as a student and lived at 83rd Street and Central Park West since 1960 (2975). Became familiar with the Plan in the early sixties. Did stories about the Area in the early sixties for the West Side News and attended talks regarding the increase in the number of low income units from 400 to 2500. (2976-2977) There was a total mix of people in the Area. Observed an improvement in the Area prior to the time she acquired her brownstone. The main improvement was the start of new construction. The idea of integration within a building appealed to her. She saw the brownstone movement starting. Saw circulars and went on house tours.which gave rise to an interest on her part in acquiring a brownstone-also she got married in 1965. The brownstone was an ideal way to live in New York and at the time, prices were still fairly reasonable (2978-2979a). She had been brought up in Greenwich Village and had lived on the streets of the City. She was determined to raise children in the City particularly with a backyard. They would have a mixture in the neighborhood the same as she had when she grew up in the Village (2980). One of the elements was the announcement by Trinity School that it committed itself to stay in the Area instead of moving to Westchester. She said that is one of the good omens. They had funds available for buying a home to be realized from the sale of the co-op apartment they owned and they decided to stay in the City as against moving to the suburbs. They preferred a little square brownstone garden to two acres in Larchmont which had no appeal to her since she had lived in the suburbs and hated it. The property was a 4 story 20 foot brownstone. They made a duplex for their own use and the two upper floors were rented out (2981-2982). At the time they bought the property the plan was progressing and everyone seemed perfectly happy. The squatters moved in in March or April of 1970. She attended a meeting of homeowners where she heard there was a call for more units of public housing (2983-2985). Then there was the meeting at the home of Dr. Arthur Logan on W. 88th Street. It turned out to be a frightening experience. She was unaware of the hostility that was shown and although she knew why she moved into the Area she also was concerned about her role as a mother, wife and homeowner. Both the meeting itself and the call for more units of public housing was a little frightening (2986). The meeting started with trouble because Father Browne

was out in front with p[illegible]s. There was a lot of screaming and yelling going on out[illegible] (2987). The explanation for the people outside was the governmental delay, the City bureaucracy and promises made and promises broken. They also discussed the history of the Plan and the change from 400 units of low income housing to 2500 units. Assemblyman Blumenthal said they should support an additional building being turned into public housing (2888-2990). She inquired whether they would be asked to do the same thing every year but was told "no" but she began to have doubts. Shortly after that the organization of Continue came into existence (2991). It started mostly with brownstone owners and a few tenants from Central Park West and the new buildings north of us. They felt that a voice had to be heard in terms of City Hall, the City officials, the housing officials, to hear that there was a middle class voice - To hear that there was no need for more public housing. Also they were very disturbed at the way the City handled or didn't handle the squatter situation. They saw no control by the City and there were other buildings scheduled for demolition that made perfect objects for further move-in efforts by squatters (2992). They felt the City was vacating buildings before they were ready to demolish and rebuild and that created a target for squatters. (2993) Continue wrote many letters and had many meetings. The essence of their position was that they represented people who had moved into the neighborhood, had paid a lot of money for their homes in what was promised to be a fully integrated, economically and racially neighborhood. Their understanding was that the balance was to be 2500 units of low income units, that there was to be full integration within the buildings not designated for public housing. They understood that the integration was to be of the neighborhood-not all low income on one corner and one all luxury building on another corner, and never the twain shall meet (2995). Many letters were written and information along these lines given to interested parties. They wanted united support. These activities continued from the Spring of 1970 until she left the Area in December 1973 (2997-2998). There was a lot of tearing apart of the Community-hostility. There was an attempt to organize the community during this period. Efforts were made to explore common objectives-against the City which had done us all wrong. But the tension was so great she was emotionally unable to speak. She was so frightened that she was on the verge of asking for police protection. She therefore resorted to writing letters (3000-3002). They met with Strykers Bay and agreed on seven points. The people wanted decent housing and they were sympathetic(3003-3006). The squatter tenancies changed often. She would witness people moving in and out sometimes in the middle of the night. There was a high turnover. The buildings were favorite hiding places for petty street crime things. She saw a taxicab being broken into and the thieves running into one of the corner buildings. The basement storefront was ripped open and was being used for drugs. She saw envelopes being passed and people going down into the basement. She found out from the local policeman

A-418

GRATZ

that this was a favorite shooting alley (3007). There was an old fire engine for kids to play on but by the time she moved (December 1973) it was no longer fit for kids. There were broken glass and crap games going on-liquor bottles. There was planting of trees,shrubs and flowers to spruce up the block but no sooner was something planted than it was stolen. Their bikes were stored in a cage and no sooner were bars put on than they found people breaking the bars and taking the bikes out. On one occasion they unscrewed the front wheel and the brake system and whatever parts they could take. One incident which disturbed her most of all was when her daughter was knocked off her bike and a couple of kids started yelling at her and her older daughter about being rich kids and private school kids (3008-3009). Her older daughter was knocked down and her ball was taken away from her. Some kids said "You goddamn rich kid". It got to the point where she could not let her kids play in the street. In January 1971, she was mugged. She landed in the hospital with a fractured skull. This occurred on the corner of 86th Street and Columbus Avenue. She did an article about it in the New York Post.(3010-3011). She witnessed a woman being assaulted on her block at five o'clock in the afternoon. She also witnessed a purse snatching in front of her house. She heard a scream and went to the window and saw a purse snatching. There was continuous use of the playground for crap games and drinking and for music practice through all hours of the night which led frequently to street fights. There was a fire in a Volkswagen bus parked right in front of her house. She was told it was started with some kind of bottle of inflammable liquid. The kids set fire to garbage cans. She replaced three plastic ones in one summer. The window of her tenant's car which was parked in front of her house was broken several times (3012-3013). There was an instance of a man who was drunk or under the influence of dope who lunged at her but friends of hers were nearby and they pushed him away. While her husband was parking his car he had a little tap on the fender of the other car and the driver of the other car threatened to sue "I'll get your fancy brownstone away from you." Things like that were daily occurrences. She became totally discouraged in terms of where the City was going with the Area (3014-3015). She had written every letter imaginable and had gone to every meeting possible; had seen every City official; had picketed Gracie Mansion; had done everything she could to convey the idea that the middle class in the neighborhood were a very tenuous group. She had only been there 3 years and she saw some of the original homeowners and tenants leave. She was a nervous wreck five days before and five days after Strykers Bay meetings(3016). She was very discouraged. It came to a point where there was no way of bringing the groups together. She knew that sites 30 and 4 would go ahead and 236 funding coming in which was called middle income but where the same people who qualified for 236 qualified for public housing. (3017)

A-419

GRATZ

Felt that all new 236 buildings built into the Area was going to be low income like Columbus Manor and Westwood. She was no longer living in a community she wanted to be a part of. On a personal basis she could not be a wife and mother, hold a full time job and be active in the community at the same time-one of these things had to go (3018-3021). They made the decision to sell a year ago in the spring. Put their house on the market the end of May or early June1973. Was not able to sell it right away (3022) Offered the house for $175,000 even though their investment was close to $190,000. Got no offers. Reduced the price to $160,000 wanted to net $150,000. They attempted to conceal the neighborhood to potential buyers but they said "It's a beautiful house but I drove around the neighborhood and I'm sorry". Had mixed feelings about selling-it was not just the money they had put in but they did things with their own hands (3023-3024) She could not even show the house-her husband had to do it-she was so upset about selling. They found an apartment in October but could not rent it until the house was sold. They had absolutely no savings left in the bank-everything was in the house (3025) They took the apartment anyway and moved in December. They sold the house in lateJanuary for something less than $150,000. Sustained a loss of close to $50,000 (3026-3027) Their house is on the south side of 87th Street and is not in the Area (3032-3033) Alden Haldenstein was their broker (3034) When they were looking at the Area considering purchasing a house in1967, 1968 they were told that the project would be completed in the early 1970's. (3050) She was bothered by the fact that what was originally planned for the total community was not happening-a mix of people . That there was an excessive number of public housing units at two levels (1) what was the amount which could be taken and still keep the Area in balance and (2) the commitment made by the City for 2,500 units of low income to take care of the relocatees. However when she got involved with the community she found there were 3,000 to 3,500 units of low income (3052). She felt that when the project was completed they would inflate those figures and would certainly not produce economic integration which was the unique goal of the Plan in terms of the whole country (3053) Thinks the 236 subsidy is a terrific program but the trouble with it is its income limits do not spread high enough (3058) They were given to understand that the welfare occupancy of Columbus Manor and Westwood would not be repeated in Leader House-and yet it did happen again (3060) She was not opposed to providing for the relocatees but she was opposed to bringing in low income families who were not relocatees. It is a big city and there are lots of buildings going up. Waterside was going up with only 7% low income and Manhattan Landing with only 4 or 6%. Why on the West Side are we being asked to accept 40, 50 or 60% or more-she felt the West Side was being

taken advantage of.(3061-3062) Continued writing letters but they did not get responses (3064) She organized the demonstration in front of Gracie Mansion. There were between 250 and 300 people and there was press coverage(3072) The north side of the street she lived on is in the Area (3072) The 236 income limits preclude policemen, firemen, civil service workers and restrict the occupancy to low income families because it eliminates everybody over income of $12,000 or $14,000 per annum (3073) In Leader House there were tenants taken from other areas who were not relocatees from the Area. She received a copy of a departmental memorandum of the Department of Relocation which said apartments were available in Leader House for people in other urban renewal sites who were not West Side relocatees (3073-3074).

A-421

JOHN B. MAYLOTT
(3077-3127)

John Maylott was employed by the Federal Housing Administration (FHA) and then the Department of Housing and Urban Development (HUD) between 1957 and 1973. He was director of the New York City area office of HUD from 1970 to April 30, 1973 (3078). His responsibilities included the administration of all of the programs of HUD in the Eastern part of New York State (3080). He is presently the executive director of the Connecticut Housing Financing Authority (3094). He has lived in the State of Connecticut for the last 13 years (3018-3109). FHA was involved in insuring mortgages of brownstones and certain high rise buildings from the early days of the Plan and his office was concerned that the Plan met Federal requirements (3083-3090). The luxury housing portion of the Plan became unfeasible but that this did not represent a defeat of the plan (3091-3092). He became aware of the issues surrounding Site 30 in 1970 in connection with the squatters and as a result of discussing it with Dr. Logan, various brownstone owners and Strykers Bay (3092-2093). He had half a dozen meetings with various people in connection with this problem (3093). He was aware of the serious controversy surrounding the conversion of Site 30 from a middle income designation to a low income designation prior to the application being made by the City to the federal government for funds for low income housing on this site (3095-3096, 3116). HUD made the required environmental analysis and the site selection criteria study for the project at Site 30 (3096-3097). The site selection criteria study was made by technical people in the New York HUD area office and that he reviewed it and made the decisions based on staff recommendations (3102). The federal concern was to see that the Plan was being followed so as to insure the viability of the neighborhood and the marketability of housing in it (3099-3101). He doesn't believe there is any threat of the Area tipping (3104). He received assurances from the city that the balance of families within the area would be maintained as originally planned (3105). The federal government has committed itself to funding in the amount of $6,090,000 for the low rent housing project at Site 30 (3107-3108). He visited the Area several times a year and that he last visited it in 1973 (3109-3110). He did not know how many units of low income housing were planned for the area although he recalls the 2500 unit figure (3110). He did not know how many units

there are of low income housing in the area in 1973, how many of the unfinished projects in the area were complete, or how many such units exist there now (3111). He is familiar with the concept of the tipping point and that it has validity as a concept (3112). He doesn't believe the area will tip or that enough low income units could be put in the area for it to tip (3112-3114). He stated this was his opinion even though he did not know the number of low income units in the area (3113). Fears of people are not facts (3108, 3119). Urban blight is a deterioration of housing and services, urban decay is one step further along the road beyond urban blight and urban design as it applies to the Area involved a Plan to integrate the type of housing and services in the Area (3117-3118). He could not define "quality of the environment" (3118-3119) nor did he know how HUD defines the term "environment" (3124) or what the term "threshold" meant in HUD environment regulations (3126). He showed some familiarity with neighborhood stability and psychological attitudes and fears, stating that the invasion by the squatters in the Area created fears among home owners (3119). "Alternative sites" means more than one site for a proposal (3119-3120). Defendants' Exhibit E was prepared by HUD pursuant to the National Environmental Policy Act (3121). This Exhibit does not cover all facets of urban blight (3121), urban decay, urban design, the quality of the built environment, aesthetic values, neighborhood stability, or psychological attitudes and fears (3121-3123). There is no consideration of alternative sites in defendants' Exhibit E (3124). The environmental statement is not supposed to be used to analyze social issues (3125). He states that the site selection criteria study, (defendants' Exhibit B), is more concerned with social issues than the NEPA statement (3127).

DAVID F. GOODMAN
(3128-3151)

Lives in two-family, four-story brownstone located at 153 West 91st Street (3128). When he purchased it in April, 1969 it was a run down, one-family house (3128). Since he moved in he has renovated the brownstone's plumbing and electricity and has attempted to restore its aesthetic parts (3129). Has had one family, with 2 small children as tenants for the last 5 years (since September, 1969). They pay $600 per month rent (3129). His brownstone is the third building west of Trinity School and is located directly across from Stephen Wise Towers (3130-3130A). Site 30 is on the southwest corner of 91st Street, extending to 90th Street (3130A). Moved from previous residence at 315 West 106th Street because: (1) had great desire for a brownstone; (2) wanted more room; (3) wanted to own rather than rent; and (4) knew the area well (3130A). More specifically they were able to afford the Area; there were schools of all kinds, churches and stores; the Area is attractive; and there is convenient transportation (3131). He had attended Joan of Arc High School (3130A). Believes Joan of Arc is basically the same now as when he attended it, with nothing remarkable about the school. Actually has little contact with the school (3148). Every night he and his wife walk their dog after 11:00 P.M. or 11:30 P.M. (3131). The garbage on the street is in cans or plastic bags, ready to be picked up. The sanitation trucks come every day around 8:30 or 9:00 and usually there is no garbage out again until evening. Never noticed garbage strewn on the street (3132). Surprisingly little graffiti in the area (3133). He and his wife have never been attacked or mugged while living in the Area, nor have they received unpleasant comments. They have had no trouble with the adults or children from the Stephen Wise Tower public housing project (3133-3134). Recognizes the students from Trinity School by their schedules and the younger children wear uniforms. They present no real trouble, but the children do tease their dog; at Christmas time the children pulled down the Christmas balls on the trees in front of their brownstone, which the children from across the street did not do; and sometimes these children litter (3134-3135). They have no complaints regarding noise and they sleep in a bedroom facing Stephen Wise Towers (3136). Restaurants in the Area and extending to Broadway range from expensive and poor to inexpensive and good, with a great variety of types. Description of restaurants (3136-3140).

A-424

GOODMAN

Was on Continue's mailing list since its beginning in 1967. Continue has stopped sending newsletters. He received letters largely from 1971-1972. In the last year he has received two notices from them of meetings; one to be held at Strykers Bay and the other to be held at the local planning board (3140,3142). Continue's newsletters were well put together but with less factual information than that of Strykers Bay. In the last year the style changed and it became one sheet printed on both sides (3141). Further, the writing style changed and they got into characterization in the last two or three pieces (3142). There were factual mistakes in earlier issues. Continue sent a scare bulletin saying that 80% of the tenants in Leader House would be poor. People at Strykers Bay said that this was entirely untrue. When asked a friend at Continue, he was told that they really did not know the true percentage, but they cited the figures to generate the interest of homeowners. Later to find out the truth went to a meeting at Strykers Bay where the woman responsible for renting was speaking (3143-3144). Receives number of calls from friends interested in buying into the Area. A friend made a bid of $185,000 for a brownstone on his block. This is probably the highest bid for a brownstone on the West Side, and probably will be turned down as too low (3146). The people next door just bought their building for $165,000 (3146). He just bought another brownstone (a Grade B, Class B tenement), not in the Area, but at 128 West 80th Street (3146-3147). He believes this location would be affected by what happens in the Area (3146-3147). The building is presently a rooming house which he plans to convert to apartments. No immediate plans to move there, although might take small apartment there since no longer needs large one (3147). He interviews people to get an idea of what their attitudes are, and believes that there is no way to test for fear (3150).

MR. ROBERT HAZEN
(3153-3185)

Robert Hazen, is at present the general manager of the New York State Urban Development Corporation. He has been at that post for three years (3154). Prior to this he was commissioner of the Department of Development of H.D.A. from December 1967 till the spring of 1971. His duties were to supervise the urban renewal program as well as moderate and middle income housing. He worked with, and is familiar with the Plan (3155). The concept of the Plan was to clear and redevelop with a view to making the neighborhood a stable economic tax base and long term future place to live (3156). Part of the Plan was the eventual return to the area of people who had been displaced (3157). For reasons of logistics, the Plan was devised into stages. Modification of the Plan, which is not an uncommon procedure, was necessary (3158). There were 2,500 units in the original plan to be used for low income housing. These units were to be divided into three types; regular public housing, renovation of brownstones by the Housing Authority, and a variety of different programs (3160). The original Plan did not have a middle to low income percentage. This first came about in approximately 1968 and was established at 70% middle to 30% low (3161). The middle income housing was to be achieved partially through the Mitchell-Lama program. He describes the plan whereby limited dividend housing companies are formed by a State or City Agency and receive from same mortgage money and tax abatements (3162). Skewed rentals occur where the extra amounts of rent that low income families are unable to pay in middle income housing are spread throughout the rental rates of the middle income tenants. The State capital grant loan rent assistance program is another subsidy type plan (3163). Other programs, such as section 236 were devised to provide low income tenants into middle income housing. In all, approximately 15,000 units were to be made available in the Area (3164). After 1965, the construction cost per room in Mitchell-Lama housing rose from around $30 a room between '62 and '65 to $80 a room in '70 or '71. Today the cost is around $95 to $100 (3166). Thus, the rising cost in Mitchell-Lama's have made the use of section 236 subsidy necessary. This cuts rentals in half (3167). The paramount policy, was to achieve an "economic and ethnic mix in balanced proportions" in the Leader House, Westwood, and

A-426

HAZEN

Columbus Manor projects although no numbers were specified (3168-3169). Squatters first moved into the southerly portions of Columbus and Amsterdam in the late winter of 1970 (3170). The City met with their representatives in order to agree on some form of rental or occupancy agreement in return for essential services until the buildings were to be demolished. The shortage of federal housing subsidies greatly slowed the demolition of these structures (3171). He does admit on cross, that these squatters did not have the legal right to move in (3184). Further, Hazen admitted that the squatter issue was a "politically involved situation" (3185). Eventually, rental agreements were made with these families (3172; 3185). Their occupancy is until the sites are to be redeveloped (3172). After consultation with Strykers Bay, the local planning board, and the local school board, Hazen's office recommended that Site 4 be changed from luxury housing to public housing in conjunction with new P.S. 209. Site 30 was converted to low income housing from its previous designation as moderate or middle income housing (3176). The "legislators" in the Area supported this change (3177). He does not feel this changed the concept of the Plan although he is familiar with the concept of tipping point (3177). "Property values for brownstones" have risen (3178). Later, under cross, Hazen was, for the first time, made aware that Site 31 which is adjacent to 30 is also low income housing. These are the Stephen Wise houses (3182). He admits there are a "number of publicly-aided projects on the perimeter" of the Area (3180). He stated that he doesn't feel that this will lead to an over-concentration of low rent housing in the project (3183). He is sure the squatters have no relocation rights in the area (3185).

DAVID S. OLINGER
(3186-3211)

David Olinger is presently employed by the New York State Urban Development Corporation. He has been with them since December of 1972 (3186). Previous to this, he was employed by the N. Y. C. Housing and Development Administration as Deputy Commissioner of Community Development. He held this position from December 1967 until December 1972. During this period, he was in charge of the New York City Urban Renewal program. He was first employed by HDA's predecessor HRB in October 1962 as an assistant planner (3187). He is a graduate of Brooklyn College receiving a BA in urbanism and later an MA from N.Y.U. in urban planning (3188). The Plan was intended to rejuvenate a 20 square block area as a "showplace for the nation" in urban renewal (3188). Approximately 2500 low income units were originally slated for habitation, some to be part of middle income housing. Subsequent changes with regard to the number of low income units and sites were made (3189). The combination of inability to obtain subsidies for low income housing in a moderate income project, plus the need for a school that was being proposed, led his office to conduct an "analysis" that ended with the proposal to change Site 4 to all low income housing (3190-3191). It was their contention, that the previously planned Mitchell-Lama project would not be marketable in this area. He does not believe, however, that this will alter the Plan in any way (3191). A similar rationale was used in determining to alter Site 30 for use as public housing (3192). This "analysis" did not include any surveys in relation to the change in the use of either Site (3197). He admitted that no field work was done (3198). There were several occasions where Federal 236 interest subsidy program was used. He was directly involved with the tenanting of Columbus Manor, Westwood, and Leader House (3193). The Department of Social Services changed its schedule of rents to allow people who were eligible to afford the rents commanded by these buildings. Therefore, when tenanted, there were welfare recipients moved in over and above the 30% units for leased public housing (3194). This policy took precedence over the previously stated policy of allowing 70% middle income and 30% low income in a particular development (3195). He does not feel that the conversion of Sites 4 and 30 have altered the tipping point (3196). Site 25, consisting of 168 public housing

units, is across the street from Site 30. Stephen Wise, adjacent to 30, has 399 units. Site 30 itself would consist of 160 units (3199). The existence of 700 low income units in one block does not constitute a "concentration." Local politicians were consulted before approving the conversion of the sites (3200). He did consult with both Strykers Bay and Continue groups concerning the conversion. He did not receive written approval from any of the sponsors of the Pilot Project Area, whose contract called for such an approval, before making the change (3201). In figuring the total number of low income apartments, he broke down the numbers as follows; 168 at Site 25, 399 at Site 29, 158 at Site 38, 270 at Site 4, 200 rehabilitated units and the remainder all proposed or included in the moderate income units for a total of 2700 units (3203-3204). On further examination of Deft. Exh. S, he admits to 276 rehabilitated units, not 200 (3204). In giving this numerical breakdown, he did not include low income units at the perimeter of the Area such as De Hostas House or Douglass. He did not include the welfare families he previously admitted tenanting in the Leader, Columbus Manor and Westwood Houses (3205). As regards the squatters, he admits they did not have a legal right to move in (3206). In any event, the city went ahead and entered into rental agreements with the squatters (3207). The substantive issue in controversy over Site 4 and 30 was the tipping point fear (3208). Since 1972, he has had "very little" to do with the Area.

A-429

BERNARD J. WOHL
(3213-3250a)

Wohl is executive director at the Goddard Riverside Community Center. (3214) He has done this for 2 years. Has his masters in social welfare from U. of Buffalo. Goddard Riverside is a multi-service and multi-function Settlement House. (3215) They run their own camp, and are involved in job placement, preschool program, project Head Start, etc. (3216) They also run a senior citizens program. It meets their recreational and social needs. (3218-3219) The camp is located at Rifton, New York (3244) and is used year round. (3220) The 4 major sources of funding are: (1) Federal, (2) State, (3) City, and (4) Private. Their budget is around $900,000. (3222) They are a member of Strykers Bay Neighborhood Council and the 24th Police Community Council. (3223) Although he sees graffiti in the area, there are worse areas in New York City (3224) Garbage and litter is not strewn in the street. (3225) There is some degree of conflict that goes on in the neighborhood. (2228) Believes the conversion of sites 30 and 4 will be healthy for the neighborhood. (3230) Many more middle income than low income in the community. He does not believe in the tipping theory. (3231) More low income people are needed in the community. (3232) Head Start is a pre-school educational program. (3233) Youngsters in program are academically progressed once they enter school. (3235) They have a Day Care Center of 72 youngsters. (3237) Head Start and Day Care have contributed to the neighborhood's stability. (3238) The center has never been vandalized. (3239) None of the equipment has been pilfered. (3241) Operation Friend, is run in association with the Police who talk with youngstersand adults in the community. (3243) This relationship with the Police has contributed to community stability. (3244) Cooperation between the center and 3 area schools exists. They use Walden School's facilities for summer day camp, Trinity's auditorium and gym (3245) and Columbia's swimming pool. (3246) This relationship has aided stability in the community. (3246) Some of the senior citizens do entertain fears with regard to crime. (3250).

A-430

JULIA RUDY MATLAW
(3252-3279)

Has lived in Apartment 14, 43 West 93rd Street, within the Area, since August 1, 1957. Lives in a conservation building which is eight stories; was built in 1905; has apartments of 5-8 rooms with high ceilings and old-fashioned plumbing. It is a rental building (3252-3253). Family moved from New Jersey to New York City because her husband was working in New York and needed to be in town in the evening; they found suburban living boring; and they wanted their children to be exposed to a wide mixture of people (3254). Since September, 1957 has been involved in the block association, except for 2 years when her family was away from New York, and was chairman from 1957-1968, except for 1964-1965 (3254-3255). She is familiar with the Plan through her position as chairman of the block association (3255). When heard about the Plan she was very concerned about the housing needs of people on her block. Her block at that time had 5 fairly standard, well maintained buildings, brownstones and five-floor walk-ups in various states of disrepair and occupancy, SRO's and walk-through apartments (3256). They organized the block association because a child had been bitten by a rat, creating a feeling for the need for better housing (3256). However, worried because new housing did not always benefit the people who had been living there previously in the horrible housing (3257). Her understanding of the relocation plans in the Plan developed as of 1962 was that people in the neighborhood would have the right to return and would be provided with decent housing (3258). In discussing the relocation provisions with families on the block, she told them that her understanding was that they would have a right to relocate in the community and as far as possible would be provided with housing while they waited. They expressed a good deal of fear regarding relocation (3260). Still knows some of the dislocated families (3261). One family in the South Bronx has a five-room apartment in a walk-up building. The maintenance has been deteriorating in the last 5 years; transportation to work is difficult; and the area is dangerous for the children--there is a great deal of narcotics and the daughter has been attacked once (3276). The relocatees in East New York are Welfare families. The neighborhood has become unstable. It is claimed that tipping occurred, although she has no idea of the validity of this claim. The building next door to these families has been abandoned (3276).

A-431

MATLAW

Since 1969 has been a teacher-coordinator at P.S. 84 at 32 West 92nd Street. It is a New York City elementary school, i.e., pre-kindergarten through grade 6. Her work is largely administrative, with some teaching (3262). Sent one of her children to P.S. 84 (then called P.S. 93) where she attended kindergarten, and did not continue into first grade. Sent her children to a private grammar school, Alexander Robertson, because she did not approve of P.S. 93's principal's system of placement. Felt she lived in an integrated community, and wanted her children to attend integrated classes (3263-3264). Today would send her children to P.S. 84. The ethnic make-up is 40% Hispanic; 30% Black, including a small group of French-speaking Haitians; and 30% other, largely Jewish and about 20% Oriental. The ethnic breakdown has remained fairly stable (3264-3265). The children come from quite varied economic background: there are children from 322, 325, 327, 350 Central Park West buildings, a few brownstone children, children from the large high-rises in the Area, children from public housing and children participating in OPERATION MOVE-IN (3266). Families seek to get their children into P.S. 84. She is in charge of pupil accounting which includes admissions and receives calls as to whether certain buildings, people are considering as residences, are within the district. Also gets many written requests for waiver of district requirements. Now require rigid evidence for enrollment because of budget restrictions and overcrowding. One woman paid to have a telephone put in her name at a house on 95th Street so as to have a phone bill for proof of residence (3266-3267). From the buildings they are considering as residences, thinks these inquiries are largely from middle class professional people (3267). Description of jurisdiction of school (3268). Description of her block (3268-3269). Does have complaints regarding noise in the area of her house, largely from composer and drummer son jamming, radios and televisions from across the street, and 3 children who go to Music and Art and practice their instruments. Whether it bothers her is determined by how late it occurs. Likes to go to sleep by 11:00 P.M. (3270-3271). No particular noise from Westwood or Columbus Manor (3271). The relocatees' building is quieter than the others (3271). There is no garbage problem per se on the block. Disposal problems of her own building bother her. No problems related to Columbus or Westwood Manors (3272). There are no problems with derelicts or people sitting and drinking beer (3272). Is familiar with the discipline problem at P.S. 84 (3273). There has been a change in the nature, but increase in the number of problems. There are fewer huge rumbles, but there are fights between 2 children (3274). Would describe as fairly happy school (3275).

S. WILLIAM GREEN
(3282-3385)

S. William Green is the Regional Administrator of the Department of Housing and Urban Development. He has been Regional Administrator since 1970. He is responsible for the administration of all HUD's programs in New Jersey, New York, Puerto Rico, the Virgin Islands and the Canal Zone. These programs include public housing, FHA housing, urban renewal, model cities program, Section 701 planning program and a number of other departmental programs (3283). Previous to his service at HUD, he had been a New York City Assemblyman and prior to that counsel to the Joint Legislative Committee on Housing and Urban Development (3282). He has taught a series of lectures and participated in seminars on the Federal Housing and Urban Development Programs (3284). He testified extensively with regard to the project selection criteria study generally and as prepared for Site 30 (3285-3327). He stated that tipping was addressed in project selection criteria No. 2. He defined tipping to occur when there is a change in the population of a neighborhood for a mixed neighborhood to a substantially all minority neighborhood over a relatively short period of time (3285). It is a quite rapid change of a neighborhood from one that is perceived as being integrated to one that is perceived as being substantially all minority (3285). Significant to the tipping issue, in addition to the rate of change in population mix, is the attractiveness of a community reflecting the kind of community facilities that are available, such as shopping, police protection, fire protection, health facilities, transportation and cultural facilities (3286). It is his opinion that a relatively small increase in minority concentration within a community which already has some integration mix, facilities were adequate for the needs of the community (3287). The project selection criteria study is composed of eight categories by which a particular project is evaluated as having a rating superior, adequate or poor. A poor rating on any one of the eight criteria means that a project cannot be funded (3288-3289). He went through Defendants' Exhibit B, the project selection criteria study for Site 30 and explained each criteria. He stated the first criterion is whether there is a need for low or lower income housing within a community and the instant project was given a superior rating based on the area office's evaluation of the need

for low income housing in New York City (3290). The second criterion deals with minority housing opportunities and its purpose is to provide minority families with opportunities for housing in a wide range of locations and to open up non-segragated housing opportunities. The instant project was given an adequate rating on this criterion because it was built in an integrated area (3290-3292). He stated the purpose of criterion No. 2 is to give preference to projects which will provide integration and to make sure that neighborhoods will not tip into all minority neighborhoods pursuant to obligations under Title 8 of the 1968 Civil Rights Act (3293). Criterion 3 deals with improved location for lower income families to avoid concentrating subsidized housing in any one section of a metropolitan area, to provide lower income households with a wide range of locations in making their housing choices. The project was given an adequate rating because it is in an urban renewal area and there is other federally-assisted housing in the neighborhood (3293-3294). Criterion 4 is to assure that development is consistent with principles of orderly growth and to assure that the project is consistent with land use plans and area-wide plans. The instant project was given a superior rating because it is consistent with the housing element of a local officially approved land use and development plan and with regional planning. This criterion does not address the tipping question (3294-3295). Criterion 5 is the relationship of the proposed project to the physical environment. The instant project was given a superior rating because of its consistency with the urban renewal plan, a review of the design standards and a review of the environmental situation (3296). Criterion 6 relates to ability to perform a superior rating was given for the instant project because of the track record of the Housing Authority and of the developer (3296). Criterion 7 relates to the potential for creating employment and business opportunities and the instant project was given a superior rating based on the implementation by the Housing Authority of a municipal executive order requiring training in the construction trades and because of the Authority's internal career program (3296). Criterion 8 relates to the provision for sound housing management and the instant project received a superior rating because of the professional quality of the management operations of the New York City Housing Authority (3298). He then explained the material appended to the site selection

criteria study and making up the bulk of the material in Exhibit B. The first document prepared by the area office reviewed the housing situation in the project area and recreational, cultural and school situation in the neighborhood (3299-3300). This material was a conglomerate of material furnished by City agencies as well as by the HUD area office because the area office does not go out itself to find date but relies on the data of others unless there is a dispute about the date (3301). The document discusses various facilities serving the neighborhood and gives short treatment to certain issues such as the physical environment and the City's construction trades training program (3302). The next document is a statement of policy by the Deputy Mayor of the City of New York on the City's program for trying to produce integrated housing (3302). The next document is an internal memorandum recommending the whole west side area as a proper area for the project selection criteria study (3303). The next document is a New York Times article relating to racial patterns and changes throughout New York City (3304). He agrees with its general observations (3305). On the basis of the information contained in that article, he stated that in his opinion, the percentage of people receiving welfare is not so great as to create neighborhood instability (3308). The next document is an internal memorandum stating that Equal Opportunity Division recommends the site for approval (3313). This is followed by a document from the Chairman of the New York City Planning Commission pursuant to the A-95 review process stating that the City Planning Commission approves the project. The next document is a letter from the State Planning and Development Clearing House urging that there be an Environmental Statement required by Section 102(2)(c) of the National Environmental Policy Act of 1969, incorporating the request of the State Department of Environmental Conservation (3313-3314). The study made by HUD was under review in the area office for a very extended period of time (3314). The next item is a letter from the State Department of Environmental Conservation to the HUD area office inquiring as to whether an Environmental Statement would be forthcoming (3315). There follows two letters giving the legal opinion that the change in the Urban Renewal Plan had been legally accomplished by the City. Following that is a letter to the area office from Albert Walsh, dealing with the question whether the project change in question was a major or a minor change (3315). There was a concern expressed as to whether some of the

moderate income projects had gone into occupancy with a percent of low income tenants above that which was deemed appropriate. This was a concern of HUD (3316). He then testified that there followed in Defendant's Exhibit B several items relative to City Planning Commission holding a public hearing and approving the change in designation (3317). Then there is a list of sites and projects and a relocation report and a statement of the City's priorities as to relocatees (3318). There follows a letter from CONTINUE stating their arguments against the change in designation and the approval of a low income project, and stating a concern about the number of low income units in the area (3319). He does not agree with the facts set forth in this document (3320). He discusses HUD's concern that projects not be tenanted with more than 40% low income families and states that some buildings have been so tenanted (3320-3322). Once a building becomes tenanted with more than a certain number of low income tenants, it becomes hard to correct the situation because they are already in residence (3321-3322). The next item in the Exhibit is a letter from CONTINUE to the HUD area office again setting forth the case opposing the use of Site 30 for low income housing (3324). And then a CONTINUE letter to the witness, and then a letter from CONTINUE to Mr. Maylott, and then a letter to Mr. Walsh, and a letter to Mayor Lindsay. There then follows a memorandum from Demov, Morris, Levin & Shein setting forth the Trinity School's position, and a report by James William Gaynor, and then memoranda from other HUD officials relative to the project selection criteria generally stating that it was possible to building HUD-assisted housing in areas with minority concentration (3326-3327). The reasons why tipping will not occur, as follows: (1) The population data from the general neighborhood (Central Park West to the Hudson River, 110th Street to 79th Street) shows that there is a lower percentage of minority population than for the City as a whole; (2) the urban renewal program has improved the brownstone buildings on the side streets; (3) there is good accessibility to mass transit; (4) the proximity of Lincoln Center, Carnegie Hall and the theatre district; (5) shopping is good; (6) people think it is an attractive neighborhood; (7) development moving north from 72nd Street (3328-3329). He believes a number of 160 families to be a very small number in an area with a population of over 200,000 (3330). He states that while it is possible for a small area within a larger area to be on the verge of tipping, he does not think the factors in the instant case suggest it is happening (3330). There are limits on HUD's power to do

anything if he believed an area was ready to tip (3331). All he can do is to try to get HUD grantees to maintain a range of incomes within projects and to bring pressure on the grantees to the extent that they could try to enforce the rules of federally-assisted projects (3331). He refers to Section 236 projects as moderate income projects (3332). Even if Site 30 is developed as other than a public housing project, there would be a significant number of low income people residing in it and, therefore, the public housing at Site 30 at issue in this case is less than 160 units (3333) (3334). Income limits for public housing are not coincident with the general definition of poverty levels of income (3334) and that there is a sliding scale of income in the definition of low income (3334-3335). In answer to a hypothetical question he stated that if Site 30 is developed as a low income project and this would cause in excess of 2500 units of low income housing in the urban renewal area and in excess of 30% of the units in the area were low income, that in his opinion the number of units would still be so small that the neighborhood would not tip (3336). Defendants' Exhibit B and Defendants' Exhibit E (the Environmental Exhibit) are closely related (3337) and that the Environmental Exhibit is more concerned with ecological issues and that the project selection criteria document is more concerned with social issues. There is a great deal of overlap between the two (3338). The date of the environmental clearance is January 26, 1972 and the date of the project selection criteria is December 1972 (3338). John Maylott reported directly to him. The preparation of documents was the function of the area office (3340) and he approved the conclusion reached by the area office in the two studies in question (3340). The decision-making authority rested with the area office (3340). A standard complaint by those who are opposed to a public housing project is that it will tip the neighborhood (3341). On cross examination, he states that he lives on the East Side of Manhattan and visits the West Side Urban Renewal Area infrequently (3342-3343). He stated that things could be done in the Urban Renewal Area not in accordance with the Plan which would still leave the Area a successful one in terms of social characteristics (3344). He did not know how many units of low income housing were planned for the project (3345) and he did not know how many units of lw income housing there would be in the Area if the unfinished projects were completed (3346). He recalled the agreement by various government officials of the number of 2500 low income units for the Area (3346). He stated that if the number of low income housing units exceeded 2500 by 1000 units his opinion was the Area would not pass the tipping point but that he was not speaking with the same base of knowledge because other projects, such as Site 4, have not been reviewed by the Department (3348). The

project selection criteria regulations were controversial when first promulgated and that, as a group, they are not required for all projects now (3349). If an action would significantly increase the concentration of minority families in the Area which is rated as a mixed one, the project would be given a poor rating on the site selection criteria study and that would mean the project could not be approved (3356-3357). If the change in the plan were not legally approved, the federal government could not have approved public housing (3358-3360). There would not be an overconcentration of low income families in the area immediately adjacent to the Trinity School if site 30 were to be built as low income housing (3351-3355). The government was concerned that the percentage of low income families had gone over 40% at Leader House and that there was a federal directive to the City to reduce that percentage (3355). The area office prepared the site selection criteria and did the evaluation rather than he himself, at the regional level (3361). The 236 income limitations for Leader House, Columbus Manor and Westwood House at the time they were completed are quite similar to the public housing income limits today (3362). Multi-problem families are more likely to be found among low income families than in moderate or middle income families (3363-3364). He knew the project at site 30 was controversial before the federal decision was made to commit funds to it and that there were several substantive issues raised in that controversy including the issue of tipping and the effect of the decision at site 30 on real estate values in the neighborhood. He was made aware of those controversial issues long before the time the final determination was made to approve the project at site 30 (3364). The project selection criteria study does not give consideration to alternative sites (3365-3367). No environmental impact statement, following the procedures of the Council on Environmental Quality for Environmental Impact Statements, was made in this case because the area office determined that the case did not have such serious environmental problems as would require such a full environmental impact statement (3368). The term "urban blight" has a number of meanings and it has generally been

used to refer to the kind of situation that develops in older deteriorating neighborhoods where the use made of the site in an urban setting or the quality of the structures on the site has a negative effect in terms of the economics of surrounding locations (3372). Urban decay is very similar to urban blight (3369). Urban congestion represents things like traffic densities, number of people on the streets, number of people living in a given area and congestion when excessive in an urban area (3371-3372). Urban sprawl is the tendency of urban areas to expand outward at their perimeters, that urban growth policy is a policy as to how urban areas ought to develop and that urban design relates to the use of architecture and other design learning in urban areas (3372). Defendant's Exhibit E gives consideration to those factors (3373), citing parking prices, air quality, controversy to the project, density, apartment size distribution, project population, development strategy of the city and schools (3373-3376). The proposed HUD environmental regulations require the consideration of social issues (3379). In answer to a hypothetical question on re-direct examination, he stated that the announcement of intention to construct a luxury high-rise apartment building at 96th Street and Broadway would demonstrate said developer's belief that the neighborhood would continue to be attractive to people of relatively high income and would indicate it is a stable neighborhood (3381-3383).

SIDNEY H. MORRISON
(3384-3404)

He is, at present, the principal of P. S. 84, the Sol Bloom School, in Manhattan. He has held that position since November of 1969. He received his bachelor's degree in mathematics from Columbia and a master's in psychology from City College. He is enrolled in a doctoral degree program at the University of Massachusetts (3385). P. S. 84 is located on the south side of 92 Street, running through to 91 Street. Most of the students are from the Area. The school ranges from pre-kindergarten to grade 6 (3387). The school is ethnically broken down into 42% Hispanic, 27% Black and the remainder mostly White. The school is economically mixed as well (3388). In fact, classes have been formed on the basis of ethnicity, academic achievement and sex. This child-oriented program is called the Beacon Light Program (3389). The school has 25 federally funded paraprofessionals who work specifically at raising reading levels (3391). There existed "quite a bit of chaos" in the school in '69 due to 2 major teacher strikes and several administration changes. There were excessive fights and supervision problems (3391). Today, there are only occasional individual fights which occur with low frequency (3392). The problems that do exist are not socially or economically oriented (3393-3394). There is a special program for retarded children of about 20 in the class (3394). The school, on the whole, fares normally and is some cases better than normal in reading level proficiency (3395). There is practically no vandalism (3395) and with the exception of a certain time in 1973, very little graffiti (3396). The parent involvement in the school is both extensive and positive in outlook (3397-3398). The original parent association was restructured and is now a parent-teachers association (3399). There is cooperation with schools in the Area (3400). The school has a program known as GAME (Growth through Art and Museum Experience) where the children participate in creative art work and museum field trips (3402).

A-440

ELAINE J. SCHWARTZ
(3405-3442)

Lives in a brownstone at 55 West 94th Street, which is a pilot project block within the Area (3405). She and her husband purchased their brownstone from the City. The closing on it was July, 1967, and they moved in in May, 1969. Prior to the purchase they consulted with Mr. Hunter and Mr. Lauria (2 officials at the site office at 89th Street) regarding the finishing of brownstones and plans the City made available to brownstone owners, and were shown some brownstones (3406). Prior to the brownstone her family lived in Park West Village at 97th Street between Columbus and Amsterdam Avenues for about 9 years (3407). About a year before they moved out the managers hired guards, with police dogs, who were on duty at all times (3407). For 3 years has worked at Fordham University directing a federally funded project, Teaching Teacher Trainers, aimed at making effective changes in administrators' thinking towards public education (3407, 3410). The program she directs relates to Community School District 3, which runs from 59th Street to 121st Street, from Riverside Drive to Central Park, and then swings over to Lenox Avenue to include parts of South Central Harlem (3408). Was on the community School Board from 1968 to 1971, and was chairman in 1969 (3409). There are many special programs: some government funded and some funded by the school district. It is a heavily funded area because it is regarded as a good area in which to try new programs. Out of $17 million given out in the entire state of New York for the ESAA program, $1.3 million went to District 3 (3415, 3416). The main problems relate to the number of students and whether enough bilingual teachers can be found (3416, 3417). There has been no real evaluation of the success of the bilingual program (3418). Puerto Ricans and Haitians tend to go to the West Side so that other school districts do not experience the same problems (3419). P. S. 84 is one of the schools that deals with the bilingual problem (3419). The inability to speak English often results in social problems and antagonism. Son, 7 years old, attends P. S. 84 (3422). Daughter, 11 years old, attends P. S. 163, which is located at 163 West 97th Street between Columbus and Amsterdam Avenues. Describes as "very nice school" with only minor disciplinary problems and knows of no vandalism in the school (3422, 3424). 90% of the students are black

and Puerto Rican and 10% are white and Oriental. At least 40% are on free lunch, indicating that they could be eligible for welfare (3424). The major feeder for P. S. 163 is the Douglass Housing in the Area, which is at least 40% low income (3424-3425). P. S. 163 provides an excellent education with all the children rather equally well-educated. There is a good teaching staff with little turnover (3425). Daughter, 14 years old, attended P. S. 163, but now attends Calhoun, a private school, because she would otherwise have to attend Joan of Arc Junior High School (3422). After an investigation of the level of education, they decided not to send their daughter to Joan of Arc. The ethnic balance at Joan of Arc is 90% black and Puerto Rican, 10% other (3441-3442). From 1968-69 was involved in the sponsorship of Columbus Park Gamers on the corner of West 94th Street and Columbus Avenue and which according to Defendants' Exhibit S is located on Site 16 (3429-3430). It is a Mitchell-Lama, city-state sponsored middle income cooperative (3430). Was involved with the local Democratic Club which applied to sponsor the site and which split and formed the Columbus Park Towers Corporation so that the site would not have any kind of political affiliation (3430). Was executive secretary of the corporation (3431). Skewed rentals refers to when a certain percentage of families or certain numbers of apartments in Mitchell-Lama co-ops are put aside at a lower rental. The skewed rentals at the beginning of the program were to be $18 per room, and when the building opened the skewed rentals went up to $22 per room (3431). The other apartments in the building varied with floor and apartment layout from $25 to $35 per room (3432). Has 4 tenants at present residence: 3 one-bedroom apartments and one studio with a terrace; central air conditioning. Rents from $195 to $250. Has never had a problem renting the apartments (3432). There is a public housing building directly across the street from her brownstone (3432). Her children have many friends in the building and the family is friendly with a family in the building (3433). There are 2 empty, tinned-up buildings on the block. One very nearby has remained so for one year. It became vacant when the city using it as a relocation site, moved the families living in it to the buildings on 92nd Street and Columbus Avenue (3433). Empty buildings present a safety hazard in that children can get in and climb on the roofs (3434). Comes home occasionally as late as 12:00 or 1:00 A.M. Garbage doesn't seem excessive. No complaints

A-442

SCHWARTZ

of loud music late at night. Doesn't observe fights and disorders in the neighborhood, nor disorderly people sitting or milling around. Has never been mugged; has never been physically or sexually accosted; not accosted with obscene comments and taunts (3435-3437). She and her husband, along with the tenants in the public housing project wanted benches and climbing turtles placed in the neckdowns (extensions of the sidewalk in certain parts of the street) in front of their buildings. She went to a 94th Street Block Association Meeting with a petition signed by almost all the public housing tenants and all the tenants in her building. The Association is composed of one person from each building, with no tenants as members. The City listened to the Block Association, which opposed the proposal on the ground that it would lead to loitering on the block (3437-3439). Did not given written consent to City for subsequent conversion of Site 30 (3439). Did not give written consent for the younger Mr. Hudgins for the subsequent construction of a swimming pool on his property (3440). When moved in had a copy of the urban renewal plan applicable to the pilot project area (3441).

A-443

THOMAS FARRELLY
(3442-3465)

Has been assigned to St. Gregory, the Great parish, located at 144 West 90th Street between Amsterdam and Columbus Avenues, within the Area since September, 1961. Since 1968 has been a member of the Strykers Bay Council: vice president in 1970 and president since 1971 (3443). The Council is a Project Area Committee group which means that it is an agency funded by the Federal and municipal governments in order to insure community participation in an urban renewal plan (3444). Strykers Bay is an umbrella organization for organizations in the community. Description of organizational structure (3445, 3447). Organizations become members by application: must have minimum of 25 members; must be of service; and must be involved in the Area (3446). Strykers Bay provides a means of expression of community opinion; serves to inform the community; and communicates with the community (3446). Through records furnished by the City, discovered that there were some 6000 families relocated, 3000 of which were not entitled to relocation benefits at that time. The Department of Relocation has a fiscal file containing 3500 to 4000 names (3449). Around 1972 sent out 3500 to 4000 letters in attempt to reach these dislocated individuals and families. 800 were returned, addressee unknown; 150 indicated an interest, and 2100 were unaccounted for. A searching procedure as to the 800 through the Board of Education and utility companies was proposed, but never implemented. Doesn't know of any effort to reach the 2100 (3449, 3451). Strykers Bay had a mailing of up to 400 with some comeback (3451). Council recommended in order to reach these individuals and families: (1) increase staff dealing with relocatees who are not within the renewal area in holding sites; and (2) mailing and advertising in the media (3452). A holding site is a building scheduled for demolition and rehabilitation, but the time for reconstruction of the site has not come (3452). Estimates that the presently active workload for families who have been dislocated from the area and who have not yet been provided with housing in the area is approximately 500. The total active workload fluctuates, but maintains itself somewhere between 700 and 800 (3450). The designation of Site 30 for public housing was discussed at the monthly plenary meetings of the Council between January, 1971 and October, 1971, plus at committee

meetings, community meetings and community planning board meetings in which the Council participated (3453). Prior to demolition Site 30 consisted of 40 units of housing, largely apartments. Controversy arose as to whether the units on Site 30 should be rehabilitated and reserved for relocation or demolished. In Strykers Bay initially the movement was to rehabilitate, but by the October, 1971 meeting the membership had determined that rehabilitation was not feasible and that new turnkey public housing for relocatees would provide 160 units as against the existing 40 (3454). Defendants' Exhibit AG included a list of attendance at the October, 1971 meeting. Although Continue was not represented at the meeting because it is not a delegate organization to the Council, several members of the organization were present (3456). There was a unanimous vote to support Site 30 as new turnkey housing (3457). The Council then presented its decisions and reasons for it to Community Planning Board No. 7, the City Planning Commission and the Board of Estimate. The project was approved in November, 1971 (3457-3458). They were then told it would have to wait until the next fiscal year because all of the N.Y.C. Housing Authority's construction funds had been expended. However, got residual funds from the HUD region designated to Site 30 (3458). In late March or April 1970 became aware of squatters when police came to evict the squatters at 89th Street between Amsterdam and Columbus Avenues with an order from Commissioner Rawlins, Acting Commissioner of Relocation. Got in touch with Commissioner, who came to the site, negotiated with the squatters and allowed them to stay (3460, 3462). Around same time became aware of the Santos family who lived in an old abandoned building and were asphyxiated, one child dying. Community people went to the Housing and Development Administration site office and demanded that these people be housed. Since this was an emergency situation they were given an apartment on 90th Street (3460-3461). Commissioner Rawlins set up condition that if squatters came from overcrowded, substandard housing, they would be given a rent agreement. About 180 squatter families out of a total of approximately 200 were from that situation (3461, 3463). Strykers Bay's position was that people relocated from the area should be given preference, and then if there were an excess, squatters should be offered housing (3461). Squatters were both legal site relocatees and strangers, but he is unable to break down the number in each category (3463). Presently

about 200 squatters (3464). Most improvements were made by squatters; subsequently the city performed some necessary repairs. Most of the buildings have the basic necessities, although they're not always in working order. Buildings generally not well-maintained: boiler breakdowns, electrical failures, and some fires. Varies from building to building as to whether there has been an improvement in conditions (3465-3466).

A-446

KAREN JORGENSEN
(3467-3481)

Has been living in a brownstone at 157 West 88th Street between Col[illegible]us and Amsterdam Avenues for 5 years, 3 months (3467, 3472). Work[illegible] until 8:00 P.M. or later, and one night a week teaches English to adults at St. Gregory's Church (3468). Pupils are really 2 families who live in the area: one at West 90th Street and one at West 88th Street on her block. They dress neatly, cleanly and casually. The two women are sewing machine operators: one of them has been laid-off (3471-3472). Describes block with squatter buildings as pretty neat, with well-maintained garbage cans. Has occasionally seen people with shopping bags who raid the garbage cans. One night saw a man knocking over a few garbage cans (3469-3470). Has experienced occasional unpleasant or taunting remarks while walking on the street. Frequently these remarks are made by the garbage men and the Con Ed men (3470). Has visited Stephen Wise and 589 Amsterdam public housing projects in the Area (3472). As a member of FOSH (a service organization) she went to all floors of 589 Amsterdam distributing leaflets in the summer of 1973. She saw no vandalism and each floor looked neat and uncluttered. She did not go inside any of the apartments (3473). She visited the tower at 133 West 90th Street of the Stephen Wise Towers, 3 times a week in November, 1971 to tutor a woman who lived there and her sister in English. Never found any garbage in the corridors. The elevator gets stuck often and occasionally some papers collect in it. Never saw any vandalism in the building. She saw graffiti only on one bulletin board (3474-3475). Also used to go to Stephen Wise every day from January, 1973 until about September, 1973 (3476). Although her brownstone faces the street, she has experienced no general noise problem (3476). Only on rare occasions have noises interfered with her sleep (3481). She has never heard a bugle player (3478).

HENRY BROWNE
(3503-3559)

Statement of qualifications (3503-3505). Came to St. Gregory's in February of 1959 and remained as a resident until 1968. Became pastor from 1968-1970 (3505, 3554). Strykers Bay Neighborhood Council was organized in 1959 mainly to fulfill the citizen's participation aspects required by Urban Renewal legislation (3506). Was president of the organization from 1961-1963 or 1964, stepped down for a year and came back as president until 1968. After 1968 remained involved in West Side Urban Renewal area, but to a lesser degree (3507). Was connected with sponsoring housing in the West Side Urban Renewal area. Incorporated into Strykers Bay Housing Corporation to do Mitchell-Lama. Built on Site 17 from 1960-1967 and on Site 36 under 221(d)(3) program (3508, 3511, 3512). Concern developed regarding where people would relocate if only 400 low-income units were built (3514). Saw unjust dispersal of poor people in that there were not going to be sufficient numbers of kinds of housing the dislocated could afford (3517). 90% of people being dislocated were at the $5000 or below income level (3530). Was one of three principal community spokesmen during negotiations regarding the preliminary plan in 1959. The preliminary plan was for 1000 units, but Strykers Bay suggested 2500 low and moderate units (3519). Neighborhood battle regarding whether it should be 1000 or 2500 units from 1959 until 1962 (3520, 3522). Strykers Bay Neighborhood Council ended up approving 1000 units, but Browne led a movement for 2500 (3520). Both Archdiocese and Puerto Rican pressure had impact on making 2500 units the official figure for low income housing (3521). The buildings were to be composed of about 150 units on single sites scattered throughout the area (3523). The booklet (Plaintiffs' Exhibit 10) "Urban Renewal Area", a summary of the final plan, was distributed to the community and was the basis of the Board of Estimate hearing in June, 1962, the outcome of which was approval of the final plan (3524, 3526, 3527). In the mid-sixties Strykers Bay Neighborhood Council became the PAC group for the West Side Urban area (3527-3530). Browne and others objected to the 2500 figure because this figure included 900 units which were to be down as skewed rental. Jason Nathan admitted that it was ridiculous to consider the 180 units in the first four co-ops as part of the 2500 units because they required down payments and he wanted the buildings opened at $22/room, rather than $18 (3531). Under

BROWNE

Mr. Nathan's administration of the Housing and Redevelopment Board 30% in the middle income units would be held for dislocated lower income families. Section 23 leased public housing was seen as a great possibility for carrying out the program (3532-3533). 830 Amsterdam Avenue was outside the West Side Urban Renewal area and therefore priority would go to families who had occupied the site, with any leftover units promised to West Side Urban Renewal Area relocatees. Douglass Addition was to be used for the increased large families in Douglass; and De Hostas House would be used for relocatees from the area (3534). Fully taxpaying units became less feasible and were turned into Mitchell-Lama (3535). All institutions in the neighborhood had been offered an opportunity to expand their facilities as part of the plan. The council was asked by the Housing and Redevelopment Board how it felt about Trinity's expansion and the general reaction was favorable (3536). Strykers Bay supported conversion of Site 4 to public housing because: (1) new middle income units of which 30% were to be devoted to relocation of low income people, were not being developed; (2) there was no public housing in the first stage; and (3) it would be a good site for a new school with public housing over it because the community just north of the area wanted a new school (3538). Squatters actually stabilized and improved the half-empty tenements into which they moved (3540-3541). Council acted not as leaders of squatters, but as a buffer between the urban renewal administration and the squatters (3541). Strykers Bay took the position that the squatters should be allowed to stay and that they would work the squatters into the relocation workload. Neighborhood people opposed this (3542-3543). Most of the squatters were from the peripheral areas. Squatter relocatees were not entitled to housing in the area (3557-3558). If a neighborhood changes racially it is tipped. In a planned neighborhood where there are controls in high-rise apartments and a mix as here, studies of single-family home situations are not applicable (3544-3546). No tipping will occur if Site 30 is constructed with 160 low income units (3554). The West Side Urban Renewal area has achieved the purpose of bringing back the middle class as Dr. Kristof's figures illustrate; has brought in a black middle class which no one anticipated; has triggered more community participation than anticipated; has kept the emphasis on ethnic mix; has led to the expansion of certain facilities; has led to the return of brownstones to family living from boarding houses, providing 3000 upper middle income apartments not in the plan (3546-3549). However, the plan destroyed small businessmen and relocation did not go ahead in a planned fashion (3552). Was not forcibly removed from the area by the Church (3554-3555).

A-449

HANNAH HESS
Vol. XX; pp. 3560-3584

Has resided at 66 West 94th Street in a middle income Mitchell-Lama Co-op, Strykers Bay Apartments, within the West Side Urban Area for 4 years. Prior to that lived in other building of same co-op at 689 Columbus Avenue. Moved to West Side Urban Renewal Area 7 years ago from Rego Park because had heard area was ethnically and economically heterogeneous. (3560-3562) Three children who attend school at P.S. 84. (3562). Participated as a parent in activities of P.S. 84 when her daughter entered the school. (3564) Talking to other parents found children coming home with judgments about peers that they got from the teacher that generally the black and hispanic boys are "terrible" or "stupid"; and that the children were neither learning nor happy. Organized with black and Spanish parents and made meaningful educational changes in the school which led to the children learning more and a decrease in the incidence of violence. Hess wrote a book on this subject. (3565-3568) Presently employed at Joan of Arc Mini School. A mini school is a small off-shoot of a larger school in an attempt to personalize education. Joan of Arc Mini School takes a random selection of 68 students from the larger school population of ninth graders. (3562-3563, 3569-3570) The ethnic and economic breakdown is the same as the main school: 99% black and hispanic, and 1% other; and 98% poor and 1% or 2% middle class. (3572) There are 1,400 students in the main school and 68 students in the mini school. (3583) Hess thinks the main school is safer than several years ago, but there is still a great deal of hostility largely due to the anonymity. (3574) At the mini school there has been a marked improvement in reading scores over this year as measured by the metropolitan achievement tests and as observed through working on a one-to-one basis with individual students. Many youngsters with discipline problems at the main school cut through this behavior pattern and straighten out. They have a more positive approach to school and higher aspirations. (3574-3576, 3578) Teachers want to make mini schools within the larger schools now. (3579-3580) Hess would have great trepidation about sending her children to Joan of Arc because of the nature of the lack of education, and not because of the nature of the student body. (3580) No fear for personal safety during daytime or evening walks. Children have expressed no fears for their safety. No members of her family have ever been the victim of a crime in this area. No esthetically offensive things have happened in the area to Hess. (3582-3583)

A-450

BETTY JOAN LAWRENCE
(Vol. XX; pp. 3585-3591)

Since May 1, 1971 has resided at St. Martin's Tower, 65 West 90th Street, which is directly opposite Site 30 on Columbus Avenue. Has lived on the West Side for 25 years (3585). Has been on the Cooperators Association for three years and has been Chairman since January, 1974. The Cooperators Association is not a board of directors, but is an organization which the tenants established to represent their interest with HDA, the local community and their sponsor (3585-3586). When Lawrence moved in on May 1, 1971, she knew that Site 30 was proposed for public housing. She knew that Site 30 had originally been scheduled as middle income co-op (3586-3587). Squatters occupied St. Martin Towers just prior to the occupancy date. Defendants' Exhibit S shows that the occupancy date for St. Martin's Towers began in March, 1971. She also knew that after the squatters had occupied St. Martin's Towers there was talk of changing it to a low income site (3587). Knows most people in the building because of her involvement in the Cooperators Association, but only knows 7 or 8 families closely (3586). She knew of people who knew low income housing was proposed for Site 30, but some hoped to change this situation (3588-3589). Lawrence was one of the last to move into the building because someone who had originally accepted the apartment decided they didn't want to move in. The only other apartments which were vacant when Lawrence moved in were the capital grant apartments (3588). Has been waiting for 2 years to move from her 2-bedroom to a 3-bedroom apartment. There are 39 or 40 3-bedroom apartments in the building (3590). In 3 years Lawrence knows of one mugging in the building; one mugging on the street directly in front on Columbus Avenue; and the theft of a child's wallet by other children (3590). Miles Owens mentioned in his testimony that he felt the fires which occurred would not have happened in another kind of neighborhood. One was on Site 30 before it was cleared and the buildings were empty. The other was on the southeast corner of 90th Street directly south of Site 30. Lawrence doesn't know what caused these fires or how anyone could say they wouldn't have happened in another kind of neighborhood (3590). There are 20 capital grant apartments, composing 11% of the units in the building (3591).

WILLIAM HUNTER
(3594; 3605)

William Hunter, a retired Lieutenant Colonel from the Air Force (3595), graduated from the Pratt Institute with a degree in architecture. In 1944 he entered the service and was sent to the George Washington School of Business Administration and twice to MIT for degrees in meteorology and city, state, and regional planning (3596). After leaving the service, he was employed with the Housing and Development Administration from 1963 to 1970. At present, he is employed as a senior health facilities planner with the New York City Health and Hospital Corporation (3595). He is licensed in New Jersey as a professional engineer and planner (3596). While in the armed forces, he worked in the Pentagon developing housing world-wide for the Air Force. This amounted to approximately 30-35,000 units (3595-3596). In 1963, one of his concerns was the rehabilitation of brownstones in the West Side Urban Renewal Area (3597). There were a total of 485 brownstones in the area (3598). His office was located at the site. After finding out the personal requirements of a prospective buyer, his office would deliver preliminary architectural drawings and any potential for rental income. The would then go through a preliminary FHA mortgage analysis. He actually obtained approximately $20-$21 million in financing (3598). The average price, at first, of a brownstone was $19,000. Between 1963-1970, this figure doubled (3599). The increased purchase price, combined with a rise in construction costs, and interest rates lead to the project being incomplete. He, none the less, felt the program was a success (3600). During this period, he had discussions with Dr. Jerome Fine, Mr. Raskin, and William Hudgins concerning the requirements of their buildings (3600-3601). When prospective buyers came into his office, they did inquire as to the type of housing that would be built (3602). He would show them a map (Pltf.Exh. 10). Never stated to anyone on any occasion that there would be 2,500 units of low income housing (3604). He, similarly, never mentioned to anyone at any time, there would be an economic mix of 70% middle and 30% low income residents (3605). Further, he had no knowledge that low income units were to be built in the area nor any knowledge as to any percentage breakdown of class within the Area. He was given no authority to make such a statement in any event (3604). Mr. Hunter worked with a team from the office of Mr. Maylott of HUD, to demonstrate his site office's ability to process a preliminary application. Maylott relied on Hunter's office to do this (3605). Hunter was generally aware of four separate revisions in the urban renewal plan and he never presented the designations on Exhibit 10 as fixed (3607). People would come into his site office seeking general

information. He would inform them of the brownstone plan only (3609). He was not aware that the 2,500 low income units were a matter of public record (3611). He had nothing to do with the multi-story highrisers nor the distribution of families within them. If they wanted information concerning any other parts of the renewal plan, he would refer them to 2 Lafayette Street and either Mollen, Ratensky, or George Kaye (3612).

IRVIN SCHWARTZ
(Vol. XX; pp. 3613-3621)

Was member of Planning Board No. 7, whose boundaries are 59th Street to 110th Street, and the middle of Central Park to the Hudson River, from 1964 to January 1974. Was Vice-Chairman of the planning board from 1969 or 1970 to 1972 (3614). The role of the planning board is advisory to the Borough President of Manhattan in terms of votes he has on the Board of Estimate and recommendations regarding expenditures (3614-3615). The members of the board are appointed by the Borough President in consultation with the City Council (3615). Also connected with Homeowners and Residents Alliance which was organized in 1970-1971 because it was felt that the West Side Urban Renewal Area should have more public housing spread out among all the units in the area. Its membership consisted primarily of owners of homes or co-operative apartments and tenants who are residents of the area. The Alliance is a member of Strykers Bay (3617-3618). The proposal for Site 4 came before the planning board in the spring of 1970, and was approved in July, 1970 (3618-3620). July, 1971 the proposal for Site 30 was approved by the board (3618-3620). Sites 30, 4 and 23 were all supposed to be public housing sites (3616). The proposal for 70-30 first came to his attention in late 1972 when it was made to the board, basically by state legislators in the area of the West Side Urban Renewal (3616, 3619). The 70-30 ratio does not mean that 30% of all people in the area would be low income: it is limited to new buildings on the remaining sites in the area (3616, 3620). The planning board is involved in all changes in the Area, but 70-30 was not brought before the board until 1972 (3619). Not aware that many buildings completed prior to 1972 had 70-30 ratio (3620).

PETER J. PREZIOSO
(3621-3667)

Mr. Prezioso is a captain in the New York City Police Department (3621). He is currently the ranking officer and has been attached to the 24th precinct for eleven months. This area runs from 86th Street to 110th Street, from Central Park West to the Hudson River. At the request of the government he made a statistical analysis of crimes in his precinct over the last several years [Defendants' Exhibit AJ] (3622). This information was compiled from official police reports [Defendants' Exhibit AK] (3624). This is for the years 1966, 1970, 1971, 1972, and 1973; 1969 was not offered (3627). The statistical method used to compute the figures from 1960 through 1966 were not as sophisticated as those used in '70 through '73 (3630). There are various categories of crime. Burglary involves a crime where no confrontation occurs between individuals. Robbery, on the other hand does involve personal confrontation. Grand larceny falls into both categories. It refers to an amount of money or value (3632). Felonious assult is an attack of one individual against another; no property is involved. Murders and felonious assult do not come under the heading of preventable crimes (3632 a). The three greater preventable crimes are robberies, burglaries, and grand larceny auto (3633). The Area comprises only 20% of the crime figures of the precinct (3634; 3664). Following 1971, the number of felonies in the precinct declined. In 1974, the downward trend continued (3635). Miscellaneous figures just appear as a total, they aren't broken down (3653). In fact, there has been an increase in misdemeanors in 1973 (3665). In point of fact, when he prepared the figures, he did so "leaning predominantly on the felony picture;" in fact solely on the felony picture. He further admits that misdemeanors are the beginning stages of felonies (3666). The operation of the anti-crime unit and various related community programs are dealt with in detail. A modus operandi file is made up and officers are assigned to those areas where that category of crime appears to occur (3637). There is a block watcher program where civilians report crimes confidentially. There is also the block security program where the city matches funds put up by associations or tenant groups for security (3638). There is also the neighborhood team concept. The commanding officer of such a team will attend various block association meetings. He acts as a liaison between the community and the Department (3639). Prezioso personally attends the community

PREZIOSO

council meeting of the 24th precinct. It is the only one he attends with regularity and is not representative of the Area per se (3658). There is also the auxiliary police force comprised of 60 unpaid civilians. They may patrol 3-4 hours a night (3640). When questioned by the Court, Prezioso stated that there was almost a 50% decrease in robbery class figures over the last two years (3642). He also testified that street gangs are not a problem (3644). There is a senior citizens day, where senior citizens are advised of preventive crime measures (3646) and an escort type service using youths from the neighborhood (3647). Only a single problem involving a squatter occurred and he was removed (3648). He states, also, that he sees no longer a proportion of crime occurring in the Stephen Wise project as opposed to Douglass (3649). As it turns out, Prezioso took over the job of commanding officer of the 24th precinct while the former commanding officer went away on a management exchange program (3652). In fact, he states that he has every reason to believe the former commanding officer will return (3653). One final note, the Court states at (3661)..."I don't see the value of presenting all this stuff except with respect to the restricted area that Mr. Morris developed."

A-456

MILTON MOLLEN
(3669-3688)

In 1952 Judge Mollen joined the Corporation Counsel's office of N.Y.C. where he rose to the position of chief of the penalties division of the litigation department. In 1960, he became general counsel to HRB. On February 15, 1962, he became chairman of that agency and in February 1965 he became Housing and Development Coordinator of N.Y.C. until July, 1965. (3670) After leaving private practice, he rose in the judicial ranks to his present position of Supreme Court Justice, 2nd Department. (3671) Between '60 and '65 he worked with HRB and is familiar with the Plan. (3671) The reasons for delays in the Plan are: (1) difficulty in obtaining funds (2) extensive paper processing (3) Federal approval, and (4) time spent with community groups. (3672-3673) The 2500 figure for low income housing was discussed. (3673) Constant pressure from community groups to increase the number of units. (3674) The Mayor was under similar pressure. (3676) He believed the 2,500 figure was the number of units to be provided for low income families. (3677-3678) Absolute priority was to be given to on-site tenants. (3679) Gives an example where he complained when this didn't occur and he got former residents reinstated. (3680-3681) Doesn't recall the 70 - 30 ratio. (3682) Mr. Morris and Lumbard discussed middle income housing in Area and sponsorship of Trinity School. (3683) Felt strongly about bringing in community groups. (3684) He did meet with Trinity School representatives. (3685) The Plan was amended a number of times. (3686) Neither Colonel Hunter nor Louria had authority to bend the City to any commitment as regards the Area. (3687)

A-457

HERBERT J. GANS
(3690-3708, 3708-3734)

Statement of Qualifications.

Mr. Gans is a professor of sociology at Columbia University (3690). He lives on the west side of Manhattan and has observed the West Side and the Area by walking through it and being generally familiar with it (3698-3700). He defines tipping to mean the rapid and panic replacement of one population in an area by another population, the newcomer population usually being one of lower income or of minority racial or ethnic grouping (3690). He states that the tipping point is that point in the change process at which the quick and panicky departure begins (3690) but he elaborates that the tipping point differs for differing neighborhoods, differing cities and different kinds of people and that it is an inaccurate concept on which to base predictions (3691). He considers factors in the tipping process to vary tremendously with the community, the types of people who are in the area, who have been living in the area, the types of newcomers, whether the newcomers are home owners or renters, what the ethnic groups are and what opportunities people have to improve their housing conditions. He states that there are many, many factors in the whole tipping process and that it's hard to generalize about a few factors. He lists four factors of the tipping process with relevance to Manhattan including (1) the entry into a neighborhood of very large numbers of people who don't care about the neighborhood, who have personal problems such as being unable to control their children; (2) the general deterioration in the housing stock, community services and facilities in the area; (3) traumatic, intense fear of crime and (4) the advantages of moving (3695-3697). Dr. Gans has never conducted any studies or surveys in the Area (3708). He expresses his opinion that conditions in the Area are such that it will not tip and is not subject to tipping (3700-3701). He states that the West Side is a good neighborhood with many services and attractions causing middle income people to want to live there (3702-3703). He agrees with Roger Starr's testimony except as to his opinion that once the Area has 2500 low income housing units it will tip. Gans doesn't think the numbers per se of housing units means anything but it is the people's perception of newcomers that is one of the factors in tipping or with neighborhood change. He disagrees with Starr's general opinion that the neighborhood will tip (3704-

3705). He endorses Dr. Kristof's review of the 1970 statistics for the Area which showed that the Area is a good neighborhood (3707-3708). He stated that he was familiar with the concepts of urban blight (3709), urban decay (3711), urban design (3712), territoriality (3713), turf (3714), neighborhood (3716-3719), neighborhood stability and the elements thereof (3720-3725), community attitudes (3725-3726), and fear of crime, but he could not define them (3726-3727). Dr. Gans could not define or give any elements of "environment" or the human environment in urban renewal areas nor could he give even a broad definition of the environment (3729-3733).

A-459

CARLO JUSTINANO
(3734-3753)

Has resided in Leader House at 100 West 93rd Street, within the Area, for 1 1/2 years. Lives in a 3 bedroom apartment, with a bath and a 1/2, a large living room and a balcony (3735-3737). Leader House is a 236 building with 70% 236 housing and 30% leased public housing (3736). He lives under 236 and pays 25% of his gross salary as rent, which is $247.50. If he makes more than his base salary of $14,004 such as through overtime, he will have to pay 25% of that in rent (3736-3737). Came to New York from Puerto Rico when he was 6 months old and has lived on the West Side between 82nd and 93rd Streets his whole life except for 4 years in the Marine Corps from 1959 through 1963 (3737,3741,3742). In 1966 Urban Renewal came and his family became relocatees. The information the relocatees received stated they could return when the site was developed (3739). Knows directly 3 or 4 families who were removed from the area and others less directly. Most of these people moved to the South Bronx or Bed-Stuy where the conditions were deplorable (3741). He attended P.S. 9 on West 82nd Street, P.S. 93 on West 93rd Street, Joan of Arc, P.S. 118 on West 93rd Street and Charles Evans Hughes High School on West 18th Street (3742). Back in the 1950's turf mentality prevailed. Turf mentality meant that a person leaving a particular area might be susceptible to assault (3742-3743). There were youth gang activities and rumbles, and drug addiction was prevalent. There were shootings and knife fights (3743-3744). The conditions have changed dramatically: no longer gang fights; the drug scene is greatly improved; there is more freedom to walk the streets; and there is not much left of a turf mentality (3744-3745). Is vice president of the Leader House Tenants Association. Has spoken to about 75% of the 272 families in the building, and has seen about 75% of the apartments (3745-3746). Has seen no evidence of severe overcrowding or excessively filthy conditions (3746). As vice president of the tenants' association spoke with Rafael Sifonte, the former superintendent of the building, and a couple of others regarding narcotics activity in the building. Sifonte was suspicious of one of his employees and a tenant for dealing in narcotics. No arrest resulted. A building handyman inadvertently discovered drugs, and a police raid resulted 3 to 4 months later (3747-3749). He has never seen anyone sell or use drugs and no tenant has told him that

they have seen any such dealings (3749). He has heard of one instance of a kitchen fire (3749). He has heard of one mugging and was the victim of a burglary (3749). Has not witnessed or heard of any prostitution activity in the building (3750). There is a noise problem because of the thin walls, which require some adjustment (3750-3751). Problem of tenant adjustment in moving from a tenement building to a high-rise building (3750). Employees seem to feel superior to the tenants and this creates problems in their relationships (3751). Problem of security, but now visitors must all sign in and out (3751-3752). Crime per se is not a problem (3752). Comes from generally overcrowded situation or tenement with cold water only, to what he feels is a beautiful apartment and building. Can go to work, knowing that his family is safe. Pride in his home has given him an entirely new outlook and has increased his ambition: he has gotten one promotion since he moved into Leader House and is up for another (3752-3753). The building is centrally located with easy access to transportation facilities (3753). There is nothing about the building which would make him want to leave (3753).

A-461

SHIRLEY SANDERSON
(3754-3760)

Has resided at RNA House, a co-op (3757), at 105 West 96th Street for 7 years. She previously lived in Brooklyn (3754). Moved to the Area after reading about it in an article in the New York Times which mentioned the economic integration, provisions of the Mitchell-Lama Law and tax abatement (3755). Decided that tax abatement would make her a homeowner and provide reasonable carrying charges (3756). In getting her degree to become a registered nurse, she travelled at night from RNA House to Hunter College by bus and subway (3757). She has been on the board of directors of her cooperative for 4 years and has held the offices of vice president, honorary president and chairman (3757). Part of Site 4 is directly opposite her building. She is not concerned about the construction of low income public housing on Site 4 or Site 30. This is the platform upon which she has run for the board of directors. She is more concerned with high cost Mitchell-Lama than scattered housing for low income relocatees (3757-3758). At the time she learned of the area she thought the Board of Estimate was making it possible for moderate income people to move into the Area. When she applied, her salary was $6,800, and rose to $7,200 by the time she moved in (3759). The new income limitations of $44,000 terrify her (3759). She considers herself a moderate income person (3759).

A-462

SAMUEL CRYSTAL
(3764; 3781)

Prior to his present retirement, Samuel Crystal was Chief of the Division of Housing Audits (3764). His job was to examine the financial records of certain Mitchell-Lama projects, existing housing in certain urban renewal areas, and the Housing Authority. This was done to determine if these projects were self-sustaining in order that the City's indebtedness might be eliminated (3765). He examined the books of the Area and the City Urban Renewal Management Company checking on the City's indebtedness (3765). Plaintiff's Exhibit 47 is a report he prepared. The report was to indicate the nature of the tenancies within the buildings in the Area. It was ordered by First Deputy Comptroller, James Carroll (3768). In the fall of 1973, Mrs. Liebert met with Crystal and Mat Warren to obtain the result of this report (3768). She came with some of her own statistics. However, he stood by his study's figures (3769). There were some errors in the report though. There were actually 5,745 apartments in the area as opposed to the 5,631 reported. Under the Mitchell-Lama heading there were 4,056 apartments not 3,942. The number of apartments occupied by tenants receiving public assistance was 904, not 1,066. The number of leased housing units was 264, not 260. There was a total of 423 welfare tenants. An erroneous figure of an extra 158 had been included in the report (3770-3771). Some percentage changes were also made. Under Mitchell-Lama, the percentage of tenants receiving assistance should be 22.2% as opposed to the 27% reported (3771). The correct percentage of leased public housing was 6.4%. The proper percentage of welfare tenants should be 10.4%, not 10.7%. There were 5.4% State Capital Grant tenants, not 5.6. For the total figure, the percentage of 22.2% is correct, not 27%. The percentage of tenants on same kind of assistance was 28%, not the reported 30.7% (3772). Instead of 1,066 Mitchell-Lama, it should be 904, thus decreasing the total from 1,727 to 1,565. This, in turn, alters the percentage to 28% from 30.7 (3773). Mr. Crystal felt that Mrs. Liebert's report was inaccurate. He also stated that the number of welfare tenants in the Mitchell-Lama building in the Area in the part of these buildings allocated to 70% middle income as against 30% low income should be available from the HDA (3774). In defining the welfare category in his report, it was conceptually based on all people receiving public assistance (3780).

A-463

LEE GOODWIN
(3781-3807)

She is the present State Commissioner of Housing and Community Renewal. She has served in that position since April 1973. Prior to going to the State Division of Housing she was Assistant Director of the New York State Housing Finance Agency for ten years (2782-2783). Her duties include the administration and supervision of the various housing programs of the State (3782). She first came into contact with the Area upon becoming Acting Commissioner. It was desirable that surplus 236 funds be used for the completion of the Area (3784). She stated that the State criteria for making such a determination would be that the Project would be stable, serve an economic and planning purpose, have access to transportation and major sources of employment, and for a planning layout that will enhance the viability of the Project (3786). The State criteria for site selection is more restricted than that of most other housing agencies (3786). One reason neighborhood stability is important is that a project must meet the needs and requirements of the profit making sector because projects are undertaken by profit motivated sponsors (3787). The factors involved in the decision to give priority to committing Section 236 funds to the Area included that it was a desirable target area, they are processing three additional sites on the West Side for market rental Mitchell-Lama, and they consider any Manhattan site from 96th Street south generally a desirable housing resource (3787-3788). She was familiar with the concept of tipping, defines tipping to involve an inherently unstable situation, would not commit funds to an area believed to be susceptible to tipping and does not believe public housing on Site 30 will cause the area to tip (3788-3789). They are proceeding or will proceed with the processing of housing on several sites in the area (3789). She did not see any signs of urban blight on 88th Street, between Central Park West and Amsterdam Avenue when she was there approximately six weeks ago, but did see signs of the area being in a transition stage because of people being relocated out of the area (3790). She examined a good building on this block (3791). The buildings they build in the area will be Mitchell-Lama projects developed pursuant to a memorandum of understanding with the City of New York on a 70% - 30% ratio where 70% of the

families will be aided by a Section 236 subsidy and 30% of the families will be aided by subsidies under the Section 23 leasing program, rent supplements program or other subsidy (3792). Each of the projects has sponsors (3792). Sponsors could be replaced (3793). She testified as to the ranges, income limits under the Section 236 program and for public housing in answer to a hypothetical - she does not think the area is tipping even with the addition of 3500 to 4000 units of low income housing (3798) and that this decision is made in the light of the other a[illegible]ed housing in Manhattan (3801). Upward mobile working families could afford and would qualify to live in Section 236 housing (3804). Urban blight is both physical, economic and social (3805). Urban blight or urban decay do not apply to 88th Street between Columbus and Amsterdam Avenues but that there were certain problems there because of relocation (3806). Certain tensions are present because of the imminence of relocation (3806).

A-465

JOSEPH J. CHRISTIAN
(3808-3822)

Joseph Christian has been Chairman of the New York City Housing Authority since June 1973. Prior to this he was Commissioner of the Housing and Development Administration from June 14, 1971 until June of 1973. Before this he was general manager of the Housing Authority (3808). The proposed developer for construction of public housing on Site 30 is the Lefrak Organization. A contract has not been entered into (3808). Pending court action has kept Lefrak from signing a contract of sale. However, Site 30 is fully funded and has been given top priority (3809). The Housing Authority has evaluated the tipping issue at Site 30, and they do not feel the balance in the neighborhood would be affected (3809-3810). The screening of applicants has been hampered by recent Court decisions. The Authority no longer has access to Court, probation, welfare, or Board of Education records. Thus, reliance is almost entirely on the interview. This has slowed the screening process down (3811). Court decisions have also added to the time to evict tenants (3812). Christian admits on cross, that present funding is insufficient due to the increase in construction costs, however, HD-9 monies would fill the gap. This means getting money from the City (3813). There are some situations where, using the 21 point procedure, tenants were screened out (3814). These included personality traits. The modification of these points have made applicants acceptable. This has increased the responsibility of the City Housing Authority, making their management of housing projects more difficult (3815). He believes, however, that his agency can meet those increased responsibilities (3815). Christian believes that society at large and the Housing Authority have a responsibility to the poorer families "They have to be housed somewhere" (3817). In the event of, what Christian calls "anti-social behavior", the manager would refer that to the downtown office and eviction would occur (3818). Prior to such determination, a hearing is held before a hearing officer of the Housing Authority. The individual is represented by counsel. The recommendations of the officer are passed up to the three commissioner panel for approval or rejection. IF the panel concurs, the legal proceeding starts to move (3819). Christian fully admits that the character of a prospective tenant should be looked into (3821). He is sure that a certain number of less desirable tenants do "slip through" regardless of the screening procedures (3822).

HERMAN BADILLO
(3835-3841)

Congressman Badillo served as Deputy Commissioner of Relocation in the Department of Real Estate from January 1962 to November of that same year (3835). On or about November of 1962, the Department of Relocation became a separate agency (3838). The Mayor believed that by making the Department separate, the head of the Department would become a full commissioner and thus enjoy equal status with other agency heads (3839). Mr. Badillo served as Commissioner of the Department of Relocation from November 1962 until August 1965 (3835). Upon examining Defendant's Exhibit D, he described it as material he submitted to the Board of Estimate at the January 22, 1962 public hearing (3835-3836). On page 7 of that report, he described the 2,500 figure for low rent apartments as a "minimum figure." All the members of the Housing Executive Committee met the day before the hearing and agreed to draft a statement saying the Mayor would provide 2,500 low rent apartments (3836). In line with this, Mr. Badillo changed a prior statement he had prepared at a similar hearing before the City Planning Commission a couple of months earlier (3837). Mr. Badillo felt that the figure of 6,544 households to be displaced in the project area was invalid. It was his contention that because the survey was made between 1959 and 1969, the actual number of families to be displaced in 1962 was larger. It was his opinion that the original figure counted singles that, once having moved from the area, were subsequently replaced by families (3837). He went on to state that his agency did more than just move people, but was involved in youth services, tenant education, and job training (3840).

A-467

EXHIBIT C

ALL OF THE PLAINTIFFS'
EXHIBITS INTRODUCED IN
EVIDENCE AND FOR IDENTIFICATION

A-468

Exhibit C

Trinity Trial Exhibits - Plaintiffs

No. of Exhibit

P - 1 May 1, 1962 - HRB Statement on Final Plan (413)

This exhibit, prepared by the Housing & Redevelopment Board of the City of New York (the agency charged with the administration of the plan), dated May 1, 1962 and updated October 8, 1962, sets forth a full description of the concept of the urban renewal plan and the objectives sought to be accomplished by it. It establishes (at page 5) that the preliminary plan called for 400 units of public housing, the final plan increased this number to 1,000 low-income units and at page 2 provides for 1630 units of low rent housing broken down as follows: 800 units of new, 200 units of rehabilitated and 630 units of low-income housing in middle-income buildings (15%); total - 1630 units according to May 1 estimate. On October 8, 1962 this amount was increased to 2465 units by the addendum annexed to the exhibit.

P - 2 December 9, 1966 - Jason Nathan Statement to Board of Estimate (417)

A statement of the status of the plan as of December 9, 1966, reaffirming the inclusion of 2500 units for low-income families by Housing Development Administration Chairman Jason R. Nathan. In the report, Mr. Nathan stated as follows: "I can therefore state unequivocally today that the City's long-standing commitment to construct some 2500 apartments for low-income families in the West Side urban renewal area remains firm. That commitment should, can and will be kept." The commitment also indicates that low-income apartments to be included in middle-income projects will be increased from 15%, as previously announced, to 20%.

No. of Exhibit

P - 3 October 6, 1967 - Star - Van De Velde Letter Enclosing "Open Letter to the WSURA" (418)

The letter dated September 1967 from the Housing Development Administration reaffirms the City's promise to create 2500 low-income housing units, with the explicit provision that the plan is adequate to provide for housing for the relocatees. It describes in detail how the relocatees are taken care of and how the total number of units are provided for. It also makes provision for 30% of the units in middle-income housing to be allocated to low-income families. It shows that in stages 1 and 2 of construction there would be 2,393 units to be built. This breaks down as follows: 1450 new units of conventional public housing, 429 units of leased public housing, 194 units of skewed rents, 320 units of capital grant, making a total of 943 units plus 1450, or a total of 2393 units.

P - 4 October 25, 1967 - Jason Nathan Statement to Board of Estimate (421)

This exhibit represents a statement of the Housing Development Administration by its Chairman J. Nathan, dated October 25, 1967 to the Board of Estimate, and reaffirms the City's commitment for 2500 units of low-income housing and provides for an increase of the low-income units in middle-income projects to 30%. The report contains the following statement: "The most important result is that housing for low-income families will be in ample supply. There will be enough not only to meet the needs of the residents of the neighborhood who must be relocated, but to fulfill the total commitment of 2500 apartments to which the City is pledged."

P - 5 May 28, 1959 - Preliminary Plan - WSURA, Urban Renewal Board (478)

Preliminary Plan transmitted May 28, 1959 by James Felt, Chairman of the Urban Renewal Board,

No. of Exhibit

to Mayor Wagner. It is a report of the characteristics of the urban renewal area and the preliminary urban renewal plan.

P - 6 July 15, 1959 - CPC Approval of WSURA Preliminary Plan (483)

City Planning Commission approval of the West Side Urban Renewal Preliminary Plan with an opinion setting forth the history, the legal authorization and an evaluation of the preliminary plan. The opinion contains the following statement:

"A Balanced Community

One of the significant standards set in the development of the preliminary plan is the provision of a number of types of housing accommodations, at varying rentals, to encourage the development of an economically, culturally and ethnically balanced community."

P - 7 October 22, 1959 - Preliminary Plan Approval by Board of Estimate (486)

Approval of the preliminary plan by the Board of Estimate subject to ten specific conditions contained in the resolution itself.

P - 8 May 29, 1962 - CPC Approval of Final Plan (488)

City Planning Commission approval of the final urban renewal plan with opinion with respect to the plan. The opinion contains the following statement: "The most significant feature of this plan however is its broad social objectives. This is not only a plan to provide housing and reverse the trend of neighborhood deterioration, but to establish a new kind of urban environment in a strategic and congested section of the city offering

No. of
Exhibit

pleasant and varied living conditions for a broad cross section of the population. Its vision is of an entire neighborhood truly integrated on a stable basis, not simply caught at the point where there is apparent integration while one group was moving in and another out.....Nevertheless, we do not believe that it would be desirable generally or even beneficial to the valid aspiration of the Puerto Rican community to provide an access concentration of low-rent public housing in the West Side Urban Renewal Area."

P - 9 June 26, 1962 - Board of Estimate Approval of Urban Renewal Plan (489)

The resolution of the Board of Estimate approving the urban renewal plan and setting forth the circumstances and conditions under which the plan is approved, specifying ten specific conditions.

P - 10 "Summary of the Final Plan" - HRB Brochure (507)

A Summary of the Final Plan of the West Side Urban Renewal Area. This brochure describes with pictures and text the concept of the West Side Urban Renewal Area Plan and how it is contemplated the plan will affect the area. It was used as a sales brochure to sell people on coming into the area and participating in the urban renewal plan.

P - 11 October 9, 1963 - First Amendment - CPS Approval (516)

This exhibit signifies the City Planning Commission approval of the first amendment to the urban renewal plan. It provides for the designation of six areas occupied by 36 buildings as rehabilitation areas for acquisition and rehabilitation by the New York City Housing Authority as a federally aided public housing project for persons and families of low income, which modifies the urban renewal plan in that these buildings were originally slated for

No. of
Exhibit

conventional rehabilitation and not as public housing.

P - 12 December 18, 1963 - Trinity School Sponsorship Application - Letter from Glover Johnson to Milton Mollen (519)

This is a letter from the Trinity School signed by Glover Johnson, Chairman and Treasurer, addressed to Milton Mollen, Chairman of the Housing and Redevelopment Board applying for sponsorship by the Trinity School of West Side Urban Renewal Project Site 24 and enclosing a brochure describing the school and a financial statement as well as additional information with respect to the project.

P - 13 September, 1964 - Rehabilitation Brochure - HRB (524)

This is a brochure entitled "Rehabilitation in the West Side Urban Renewal Area" which was issued in September, 1964 and which sets forth the procedures for the purchase of city owned brownstones for rehabilitation (FHA Section 220 Mortgage Insurance) published by the Housing and Redevelopment Board of the City of New York. The brochure specifies the nature and regulations governing rehabilitation and financing of rehabilitation of buildings in the West Side Area and advises that a field office has been established at 167 West 89th Street, New York, directed by Mr. William C. Hunter and by Mr. Joseph Lauria as the mortgage analyst of the office.

P - 14 June 20, 1968 - Trinity School Contract (527)

This is the volume entitled "Agreement Between the City of New York and Trinity Episcopal Schools Corporation dated June 20, 1968 consisting of the contract between the City of New York and Trinity and having annexed to it as schedules the following documents: Schedule A-1, The Urban Renewal Contract Between the City and the Federal

No. of
Exhibit

Government; Schedule A-2, The Urban Renewal Contract between the City and the State of New York; Schedule B, A Schedule of Relocation Allowances; Schedule C-1, The Urban Renewal Plan, and Schedule C-2, The Project Plan of the Trinity School Site 24 Project. This is the governing document between the plaintiffs and the defendants in this action.

P - 14A March - 1966 - Land Use Map No. 3 (527)

This is a West Side Urban Renewal Area Redevelopment Areas Land Use Map revised March, 1966, specifying the plan for the redevelopment of the West Side Urban Renewal Area as it existed at the time of the making of the contract between the City and plaintiff Trinity School.

P - 15 October 14, 1964 - Second Amendment - CPC Approval (528)

This is City Planning Commission approval of the second amendment which converts parcels 12, 13 and 41 formerly approved for fully tax paying housing to be developed as partially tax exempt housing and parcel 36 formerly approved as fully tax paying housing is now to be public housing. There are also in addition several other changes in public and semi-public use parcels as well as additional miscellaneous changes. The significance of this change is that where a conversion of use was deemed necessary in 1964 application for amendment of the plan was made whereas when a change in plan was made as to Sites 4 and 30 recently no application for amendment of the plan was sought.

P - 16 December 3, 1964 - Second Amendment - Board of Estimate Approval (528)

This is approval by the Board of Estimate of the second amended plan.

No. of Exhibit

P - 17 September 15, 1965 - Third Amendment - CPS Approval (531)

This is the City Planning Commission approval of the third amended plan. It proposes to make the following modifications: The building located at 325 Central Park West preciously a portion of Parcel 23 and designated for redevelopment has been redesignated as suitable for rehabilitation. This redesignation results in a reduction in size of Parcel 23 and a corresponding reduction in the number of zoning rooms, floor area and open space. The proposed amendment also relates to a widening of pavements and sidewalks on West 94th and West 95th Street, between Columbus Avenue and Central Park West, as well as some changes in rooms, floor area, etc. on certain specified parcels.

P - 18 October 14, 1965 - Third Amendment - Board of Estimate Approval (531)

This is the Board of Estimate approval of the third amended plan.

P - 19 September 7, 1966 - Fourth Revision - CPC Approval (534)

This is the fourth revision of the Urban Renewal Plan and approval of it by the City Planning Commission. The proposed revision includes the conversion of Sites 5 and 10 formerly approved for fully tax paying housing to be converted to partially tax exempt housing at moderate rentals or carrying charges. It also provides that Parcel 36 formerly approved for public housing is now proposed to be developed for partially tax exempt housing at moderate rentals or carrying charges. It provides that Parcels 18 and 37 formerly approved for clearance and redevelopment are now being proposed for rehabilitation and Parcel 24 (the Trinity School Site) formerly approved for residential use with general office and banking uses is now proposed to be developed for residential use with school facilities.

No. of Exhibit

The change also contemplates several other changes of a technical nature which were approved.

P - 20 — December 9, 1966 - Fourth Amendment - Board of Estimate Approval (535)

This is the approval of the fourth amendment by the Board of Estimate.

P - 21 — December 3, 1968 - Fried - Hazen Memorandum (539)

This is an inter-office memorandum from Walter Fried to Robert G. Hazen dated December 3, 1968 indicating that the sponsors of six projects (Sites Nos. 7, 10, 20, 21, 22, 24, (the Trinity School Site) ready to go into construction refused to go along with proposed increased allocations of rental rooms for public housing leasing in excess of the 30% allocation previously agreed upon and that an insistance upon an increase in that number by the HDA would result in delay and possible litigation with the sponsors of the site and recommending that the change should not be put into effect.

P - 22 (for identification only) — October, 1960 - Final Plan (Urban Renewal Plan (545)

This is the Final Urban Renewal Plan which was approved in 1962 and which was subsequently modified on four occasions. There is contained in Exhibit P-14 in the Trinity School contract a copy of the said Final Urban Renewal Plan, Fourth Revision, which is the addition of the plan applicable to Trinity School contract and the contract governing the other parties-plaintiff in this action. Accordingly P - 22 was introduced for identification only and not as an exhibit in evidence.

No. of Exhibit

P - 23 May 7, 1970 - Site 4 Plan and Project Submission (546)

This is a Plan and Project Submission for a public housing project relating to Site 4 in the West Side Urban Renewal Area. It is not an approval by the City Planning Commission of Site 4 for public housing but merely a submission of the proposal to the City Planning Commission.

P - 24 August 12, 1970 - Site 4 Redesignation-CPC Approval (547)

This is the City Planning Commission approval of the redesignation of Site 4 from fully tax paying to combined school and housing with the housing on the air rights above the school being for public housing use under the Educational Construction Fund Program along with Public School 209.

P - 25 June 7, 1971 - Site 30 Plan and Project Submission (547)

This is the Submission for Approval of a Plan and Project for a public housing project on Site 30. It does not constitute approval by the City Planning Commission of the conversion of the site.

P - 26 August 11, 1971 - Site 30 Redesignation - CPC Approval (548)

Ths is the approval of the City Planning Commission of the conversion of Site 30 from middle income to low income housing. It contains an analysis of the project, along with the opinions expressed by the City Planning Commissioners.

P - 27 November 11, 1971 - Site 30 Redesignation - Board of Estimate Approval (549)

This is the approval by the Board of Estimate of the conversion of Site 30 to low income public housing.

No. of Exhibit

P - 28 — September 17, 1970 - Site 4 Redesignation - Board of Estimate Approval (563)

Ths is the approval of the Board of Estimate of the redesignation of Site 4 from middle income housing to low income housing.

P - 29 — October 1, 1973 - Statistical Worksheet - New York City Housing Authority (586)

This is a Statistical Worksheet of the New York City Housing Authority with respect to occupancy in public housing projects in or around the area of the West Side Urban Renewal Project. The exhibit according to the witness Fried indicates that there is a constantly declining white population and a constantly increasing welfare population in the West Side Urban Renewal Area.

P - 30 — October 1969 - Site Clearance Map for id.(812); in evid. (1164)

This is a West Side Urban Renewal Area Site Clearance Map. It represents the most recent of such maps published by the City with respect to the Area. It represents Area parcels which have been set aside for rehabilitation and conservation, those which have been cleared, and those in which new construction and/or rehabilitation is underway or completed.

P - 31 — March 1966 - Uncompleted Sites Map for id. (816); in evid. (1166)

This is a West Side Urban Renewal Area Redevelopment Areas Land Use Map with the ten residential sites in the Area still to be completed, outlined in red marker. It represents the most recent presentation of the situation available from the City. The corner of Site 23 on West 93rd Street, closest to Central Park West has been carved for a federally funded rehabilitation project called West Side I, but the rest of Site 23 remains uncompleted.

No. of
Exhibit

P - 32 id. Comptroller's Figures on Welfare 318 Units (819)

This exhibit is a xerox of 3 pagestaken from a ledger in the office of the Comptroller of the City of New York, relating to the West Side Urban Renewal project. The first sheet is entitled "Occupied Leased Public Housing in Limited Profit Housing W/Area," and provides figures regarding the total number of apartments, the number and percent of leased public housing apartments, and the number of occupants receiving public assistance in Columbus Manor, Columbus House, Leader House, New Amsterdam House, Gower West, Trinity House and Westwood House. The second sheet is entitled "West Side U.R.A" - "Occupied - Limited Profit Companies W/Area", and provides data regarding the location, type of building (co-op or rental), total number of apartments, number of occupants receiving public assistance, and number of occupants receiving capital grants in Central Park Gardens, Columbus Park Apartments, Goddard Towers, Independence House, Jefferson Towers, Nine G-Co-op, Old Ridge Co., RNA House, Strycker's Bay Apartments, Turin House, West Gate Apartments, West Side Manor and West View Apartments (West Park). The third sheet entitled West Side URA" - "Occupied N.Y.C. Housing Sites Development W/Area," and provide data regarding completion date, location, type, monthly rental, total apartments, and the number of occupants receiving public assistance in various buildings including DeMaria Hastos Apartments and Stephen Wise Towers.

P - 33 1967-1968-Board of Trustees of Trinity School (1031)

This exhibit lists the "Board of Trustees," "Administrative Staff" and "Faculty" for Trinity School for the year 1967-1968. Eliot Lumbard testified that all of the trustees listed, except Robert Carleton, Clarence Michalis and Sterling, Halstead, participated in the final vote regarding Trinity commitment to the project. (1031-1032)

No. of
Exhibit

P - 34 November 21, 1963 and December 21, 1963 - First Amendment - Board of Estimate's Approval (1079)

This exhibit signifies the Board of Estimate's approval of the first amendment to the Plan. The Amendment provides for the designation of six areas occupied by 36 buildings as rehabilitation areas for acquisition and rehabilitation by the New York City Housing Authority as a federally aided public housing project for persons and families of low income, which modifies the urban renewal plan in that these buildings were originally slated for conventional rehabilitation and not as public housing. The exhibit consists of two calendar designations. Cal. No. 12, dated November 21, 1963, represents the Board of Estimate's adoption of the amendment subject to a favorable report of the Corporation Counsel. Cal. No. 171, dated December 19, 1963, represents a letter by Leo A. Larkin, Corporation Counsel, transmitting copies of a resolution effectuating action taken by the Board, and with his endorsement approving the form of the same.

P - 35 April 27, 1970 - Hudgins Letter of Intent; for id. (1184); for evid. (1199)

This is a Letter of Intent to the Housing and Redevelopment Board of the City of New York offering to purchase the premises at 27 and 29 West 94th Street, for $60,000, and executed by Alvin C. Hudgins.

P - 35 - A February 11, 1971 - Contract of Sale Between Hudgins and City of New York; for id. (1188); for evid. (1199)

This is a document entitled "Contract of Sale, Redevelopment and Rehabilitation", dated February 11, 1971, consisting of the contract between the City of New York and Alvin C. Hudgins and Rosa Hudgins, with no annexations.

No. of
Exhibit

P - 36 August 5, 1971 - Hudgins Deed (1199)

This document is a deed of conveyance to the property from the City of New York to Alvin C. Hudgins and Rosa Hudgins, dated August 5, 1971. The deed recites that in consideration of $60,000 the City of New York assigns forever the premises designated as 27 and 29 West 94th Street, and refers to the Contract of Sale entered into by the parties as of February 11, 1971.

P - 36 - A February 11, 1971 - Board of Estimate Resolution Re: Hudgins; for id. (1200); for evid. (1201)

This is a copy of the resolution adopted by the Board of Estimate on February 11, 1971, authorizing the execution by the Mayor or Deputy Mayor of the Contract of Sale, Redevelopment and Rehabilitation between Alvin C. Hudgins and Rosa Hudgins, and the City of New York, subject to approval of the form by the Corporation Counsel and the City Clerk; and authorizing the Commissioner of Real Estate to execute and deliver a deed of conveyance of title for the premises designated at 27 and 29 West 94th Street, to Alvin C. Hudgins and Rosa Hudgins. This document was annexed to the deed.

P - 36 - B August 19, 1971 - Hudgins Transfer Tax Return (1201)

This document is entitled "Real Property Transfer Tax Return", dated August 19, 1971, together with an attached, signed statement requesting application of a lower tax rate in existence prior to July 1, 1971. The premises at 27 and 29 West 94th Street are designated on the Tax Map of the City of New York as Block 1208, Lots 22 and 122. This document was annexed to the deed.

P - 37 id. April 25, 1971 - Jerome L. Fine's Notes (1327)

These are notes prepared by Jerome L. Fine in connection with his testimony on April 25, 1971. They were prepared at the suggestion of Mr. Morris.

No. of Exhibit

P - 38 id. - Newspaper Article Re: Drug Raid (1448)

This is a newspaper article which appeared in the New York Post, and which is entitled "W. Side Raid Nets Seven & 16M in Drugs". The article describes a drug raid which occurred at Leader House and Columbus Manor, and to which Arthur Bromberg refers in his testimony. It was not admitted in evidence. (1449)

P - 39 October 9, 1972 - Arthur Bromberg's Letter to Police; for id. (1449); in evid. (1451)

This is a copy of a letter dated October 9, 1972 from Arthur Bromberg to the Commanding Officer 24th Precinct, New York City Police Department. The letter relates to various problems the building has had with muggings, burglaries, open narcotics dealing, and the congregation of large groups of teenagers in front of the building at 70 West 93rd Street. It mentions tenant complaints to Sulzberger-Rolfe Inc., the managing agent, and to the police. It also suggests minimal responsiveness of the police to these complaints.

P - 40 May 21, 1973 - Notice to Residents of Columbus Manor (1453)

This exhibit entitled "Notice to Residents of Columbus Manor" and dated May 21, 1973 from Sulzberger-Rolfe Inc., the managing agent, discusses the problem management had previously encountered involving residents discarding garbage from terraces. The notice discusses both the esthetic and safety considerations and encourages close supervision of children on the terraces.

P - 41 October 23, 1972 - Rules Governing Entrance of Columbus Manor; for id. (1455); in evid. (1456)

This exhibit consists of two notices to the residents of Columbus Manor, dated October 23, 1972, one of which is in English and one of which is in

No. of
Exhibit

Spanish. It is entitled "Rules and Regulations Governing the Entrance Door of the Building". The notice essentially provides that the inside lobby door will be kept locked at all times; there will be someone on duty to prevent unauthorized persons from entering the building but he is not to be a doorman; all residents are to carry a key to the lobby door and to supervise the entrance or exit from the building of children who are too young to carry keys; all visitors must buzz the apartment of the resident they are visiting; and no one who is unidentified should be buzzed in.

P - 42 October 8, 1971 and October 11, 1971 - Columbus Manor Tenant's Letter of Complaint and Arthur Bromberg's Response; for id. (1617); in evid. (1620)

This exhibit consists of two letters regarding the behavior of Angel Hernandez, a tenant living in Apartment 21-B of Cloumbus Manor; together with an envelope addressed to Mr. Arthur Bromberg, registered, return receipt requested, and post-marked October 9, 1971. The letter to Arthur Bromberg, dated October 8, 1971, is signed by five adult women, who with two female children constitute all of the residents of the twenty-first floor of Columbus Manor, excepting Mr. Hernandez: Norma H. Yardley, Edna Allen, Mrs. V. Nieves, Miss Sonia Nieves and Mrs. Gladys Stewart. The letter informs Mr. Bromberg that in the early hours of the morning of Sunday, October 3, Mr. Hernandez was found in the lobby wielding a "butcher knife"; was apprehended by a guard who escorted him to his apartment, where inebriated and in a furor he threw two kitchen chairs and a bicycle from his terrace to the street below. The letter complains that Mr. Hernandez displays mental aberrations even when sober; has a constant stream of friends and relatives visiting; and in the evening hours almost all males entering his apartment are drunk, loud and abusive. The letter expresses the feeling that because the intercoms are not in working order and because the

No. of Exhibit

only other residents of the floor are women, their situation is extremely dangerous. They threaten to hold Sulzberger-Rolfe responsible for any harm suffered to themselves, their children or to visitors because of Mr. Hernandez. The letter suggests that Sulzberger-Rolfe take action so as to avoid the threat of revenge to the individuals signing the letter. In his letter dated October 11, 1971, and sent certified mail, Mr. Bromberg advised Hernandez of the complaints against him and requested that Hernandez vacate the apartment within 30 days of the letter.

P - 43 id. - Income Limits Applicable to Westwood House (1639)

This schedule, entitled "Westwood House Site 22" - "Section 236 Schedule based on 135% of Public Housing", shows the income limits fixed by the federal government which are applicable to the 236 rents in this project; and was prepared by Mr. Bromberg.

P - 44 id. - Income Limits Applicable to Columbus Manor (1639)

This schedule, entitled "Columbus Manor Site 21" - "Section 236 Schedule based on 90% of section 221 (d)(3)", shows the income limits fixed by the federal government which are applicable to Columbus Manor; and was prepared by Mr. Bromberg.

P - 45 - Plaintiff's Addendum to City Figures on WSURA Occupied Units (1844)

This exhibit is an addendum to Defendants' Exhibit F and is entitled "Addendum to City 'WSURA Occupied Units - Redevelopment Sites'". The addendum provides totals for the figures in Defendants' Exhibit S, including overall totals and totals of categories of low income units which are completed, under construction and in planning.

No. of
Exhibit

P - 47 - Samuel Crystal's Note to James D. Carrol Regarding WSURA Tenancies; for id. (1976); in evid. (3767)

This exhibit is a copy of a note from Samuel Crystal to James D. Carrol on the subject of West Side Urban Renewal Area Tenancies. The original figures provide information regarding the percentage of housing units in Mitchell-Lama buildings, housing authority buildings and existing buildings which are leased public housing; which are leased public housing and are occupied by welfare tenants; which are occupied by welfare tenants not in leased public housing; and which are occupied by tenants on capital grant assistance. The figures also include the number of low rent public housing units in construction, and the number of low rent public housing units and Mitchell-Lama units in planning. According to testimony by Lisa Kolb Liebert the exhibit came into her possession as an answer to questions put to Mr. Carroll through Mrs. Gratz, whose name appears on the right-hand corner of the first page of the exhibit. When Lisa Kolb Liebert presented additional questions to Mr. Carroll through Mrs. Gratz, Mr. Carroll suggested a meeting between Mrs. Liebert and Mr. Crystal directly to discuss the exhibit. Such a meeting transpired late in December, 1973 and the exhibit was discussed at that meeting. The pencilled-in notations on the exhibit are Mrs. Liebert's notations to herself, and are not considered in evidence. (1976-1982) Mr. Samuel Crystal provided testimony as to his sources of information for the exhibit (3767-3768) and inaccuracies he believed to exist in the exhibit's figures (3770-3774).

P - 48 April 29, 1974 (?) - Leader House Figures on breakdown of Apartments (2021)

This exhibit, entitled "Leader House Breakdown of Apartments", shows the breakdown of the building according to the size of the apartments in the

A-485

No. of
Exhibit

P - 46 December, 1973 - Liebert's Notes From Meeting With Crystal (1892)

This exhibit consists of notes taken by Lisa Kobb Liebert at a meeting with Samuel Crystal regarding the number of units in excess of 30% that were occupied as subsidized units in each building in the Area. The notes include the site numbers; the name of the project; the number of units allocated under a subsidized program; the number of tenants in the subsidized program who are receiving assistance; and the number of additional units in each building rented to publicly-assisted families. The number of units rented directly to families on public assistance, beyond the 30% allocation, ranged from 1 in Goddard Towers to 53 in Columbus Manor.

No. of
Exhibit

building as a whole; in those apartments occupied as public housing; in those apartments occupied under the 236 program (including 49 welfare tenants); and it shows that one apartment was rented at fair market. The 49 apartments occupied by welfare tenants are also broken down by size. It also shows a breakdown by race.

P - 49 id. February 1, 1967 - Minutes of Meeting of Board of Trustees of Trinity School (2033)

This exhibit consists of the minutes of a Meeting of the Board of Trustees on the New York Protestant Episcopal Public School held at 2:30 p.m. on Wednesday, February 1, 1967, at 74 Trinity Place, New York. At the meeting Mr. Lumbard, Chairman of the Ad Hoc Committee for the construction of Trinity Towers, reported that State approval of the project was imminent and that Mitchell-Lama financing was forthcoming. He also reported that construction costs were down to the point where rentals could be $35.00 a room, and asked the Trustees to suggest people who might be interested in apartments. Mr. Johnston reported that the cost of the School would be $3 million; that the New York Bank for Savings had given him a letter of intent to lend $1 million; and that Mr. Dunckel would head up a Steering Committee to raise at least $1 million.

P - 50 id. November 6, 1968 - Minutes of Meeting of Board of Trustees of Trinity School (2033)

This exhibit consists of minutes of a Meeting of the Board of Trustees of the Trinity Episcopal Schools Corporation, held at 2:30 p.m. on Wednesday, November 6, 1968, at 74 Trinity Place, New York. Mr. Lumbard, Chariman of the Trinity Towers Ad Hoc Committee, reported that the structure was up to the thirteenth floor; title to the ground was closed with the City on October 9, 1968; the long term mortgage loan under the Mitchell-Lama Act had been shifted back to the State; and that it was hoped

No. of
Exhibit

the tower and the school would be finished by September, 1969. Mr. Heard, Treasurer, then reported that the Corporation was $122,000 short to meet the total project costs; and that there would be a "cash squeeze" of approximately $400,000 which consists of pledges that are not due until after construction.

P - 51 id. May 1, 1968 - Minutes of the Meeting of the Board of Trustees of Trinity School (2034)

These are the minutes of the Annual Meeting of the Board of Trustees of the New York Protestant Episcopal Public School, which was held at 4:30 p.m. on Wednesday, May 1, 1968, at Trinity School. At the meeting Mr. Lumbard, Chairman of the Ad Hoc Committee, reporting on The Hawley Wing and Trinity Towers said that excavation had been completed and that the ground foundation was being poured. Mr. Johnson reported that $3 million in cash, gifts or pledges had been raised and that a $1 million mortgage had been committed by The New York Bank for Savings. Eliot Lumbard, Chairman, Mr. Heard, Vice Chairman, Mr. Downer, Mr. Kinzel and Dr. Lorenze were elected to the Trinity Towers Ad Hoc Committee.

P - 52 id. February 2, 1966 - Minutes of Meeting of Board of Trustees of Trinity School (2034A)

These are the minutes of a Meeting of the Board of Trustees of the New York Protestant Episcopal Public School, which was held at 2:30 p.m. on Wednesday, February 2, 1966, at 74 Trinity Place, New York. Mr. Johnson, Chairman of the Standing Committee and Treasurer, reported that the Trustees of the Hawley Estate had liquidated $1,250,000 of securities of the Estate to be used for the construction of the Hawley Wing; that these funds were in an interest bearing account with The New York Bank for Savings; and that the New York Bank for Savings had expressed a willingness to provide

No. of Exhibit

a $1 million mortgage to complete the wing. Mr. Johnson noted that the Hawley Wing would cost approximately $2 million and the Trinity Towers would cost approximately $4 million. Dr. Craig, Chairman of the Special Ad Hoc Committee formed to plan Hawley Wing and Trinity Towers, reported that his Committee, composed of Messrs. Garten, Heard, Kinzel, Lorenze and Lumbard, had held six meetings since mid-November. He presented the preliminary plans of Hawley Wing and Trinity Towers. The Board passed a resolution approving Ad Hoc Committee's recommendations to sponsor the entire improvement of Site 24; and empowering the Ad Hoc Committee to negotiate a contract with Thompson Starett Construction Co. Inc. for the construction of Hawley Wing and Trinity Towers.

P - 53 id. - Leader House Income Limits (2046)

This exhibit, entitled "Leader House" - "Section 236 Based on 135% of Public Housing", according to the testimony of Jay I. Olnek is the schedule upon which 236 apartments in Leader House were rented. It shows the number of apartments; the size of the apartments; the approximate maximum number of people who can go into the apartment; the adjusted maximum income limits; minimum rent for the 236 apartment, including utilities; and net rent to the housing company, less electricity.

P - 54 January 8, 1973 - Memorandum from Andrew P. Kerr to Commissioner Juan Villanueva, Ms. Mimi Ellis and all WSURA Managing Agents; for id. (2048); in evid. (2049)

This exhibit is a memorandum dated January 8, 1973, from Andrew P. Kerr, the Housing Development Administrator, to Commissioner Villanueva, Mrs. Ellis and all Area managing agents. The memorandum refers to a policy of maintaining a ratio of 70 to 30 between moderate and low income families in 236 buildings. Mr. Kerr expresses concern regarding recent violations of this policy:

No. of
Exhibit

"As you know this policy has been violated three times recently - in tenanting of Leader House, Columbus Manor and Westwood House. Such breaches which have aroused widespread community concern, are not to occur. Lest there be any misunderstanding on this point, let me reaffirm that the City is committed to the 70:30 policy. As part of this commitment, I insist that the three buildings where the policy has been ignored be restored, over time to that mix through ordinary turnover..."

P - 55 June 15, 1973 - Letter from Jay I. Olnek to Police Commissioner Cawley; for id. (2059); in evid. (2061)

This is a letter from Mr. Jay I. Olnek to Police Commissioner Donald Cawley, sent certified mail, return receipt requested, dated June 15, 1973, and the receipt. In the letter Mr. Olnek requested a meeting to review possible procedures that could be taken to alleviate problems which he describes as apartments used for prostitution purposes and a "steady stream of drug addicts coming to the building to purchase heroin."

P - 56 id. Time Schedule For Rental of Leader House (2065)

This exhibit, entitled "Time Schedule For Rental of Leader House", according to Jay I. Olnek's testimony was the original plan of renting, but all dates were advanced to a later time. The original schedule provided first for exclusive renting for Area relocatees; next for other legal priorities; and finally for all applicants in chronological order. The exhibit also scheduled two meetings: one to discuss rental procedures and rent schedules; and one to discuss the progress of Strycker's Bay and HDA.

No. of Exhibit

P - 57 1964-1973, Haldenstein List of Properties Sold in the Area; for id. (2135); in evid. (2137)

This exhibit entitled "Austin K. Haldenstein Brokerage Transactions in the West Side Urban Renewal Area from 1964-1973", is a list of the brownstones in the Area in which Austin K. Haldenstein participated as a broker, which Mr. Haldenstein prepared at Mr. Morris' request. The list includes the date of sale; address of the building; date of resale, if any, and whether it was a co-op. Mr. Haldenstein conducted the resale of seven of the buildings.

P - 58

P - 59 February 23, 1972 - Letter to Jay I. Olnek from the City of New York Regarding Leader House Rent Schedule (2157)

This exhibit is a letter dated February 23, 1972, from Carmine Coniglione, Deputy Commissioner of the Department of Relocation and Management Services, to the Hampton Management Company, Attention of Mr. Jay I. Olnek; and attached rent schedule, dated February 14, 1972. The letter signifies approval of the rent schedule submitted by Hampton Management Company for Leader House. The letter mentions that out of the 279 apartments in the building, 84 had been designated for public housing. The public housing apartments are marked with asterisks on the attached rent schedule.

No. of Exhibit

P - 60 - Leader House Move-Outs (2158)

This exhibit consists of the applications for apartments in Leader House of three welfare tenants who had moved out. This is part of the background information Jay I. Olnek used in compiling the summary figures provided in Plaintiffs' Exhibit 48.

P - 61 - Leader House - 20 Welfare Studios (2158)

This exhibit consists of 20 applications for apartments in Leader House, filed by Welfare recipients who are occupants of studio apartments in the building. This is part of the background information upon which Jay I. Olnek based the summary figures provided in Plaintiffs' Exhibit 48.

P - 62 - Leader House - 20 Welfare One Bedrooms (2158)

This exhibit consists of 29 applications for apartments in Leader House, filed by Welfare recipients who are occupants of one bedroom apartments in the building. This is part of the background information upon which Jay I. Olnek based the summary figures provided in Plaintiffs' Exhibit 48.

P - 63 - Leader House - Off-Welfare (2158)

This exhibit consists of 4 applications for apartments in Leader House, filed by Welfare recipients who later changed to 236 occupancy, and remained in the same apartment. This is part of the background information upon which Jay I. Olnek based the summary figures provided in Plaintiffs' Exhibit 48.

P - 64 March 12, 1970 - Financial Estimates of Leader House (2158)

This exhibit, dated March 12, 1970, and entitled "Financial Estimates of Leader House",

No. of
Exhibit

was part of the background information upon which Jay I. Olnek based the summary figures provided in Plaintiffs' Exhibit 48. The information provided in this exhibit includes: (1) Project Statistics such as number of units, number of rooms, amount of parking available, number of stores, and number of elevators; (2) Apartment Distribution, including the number of units of each apartment type, the number of rooms in each type, the percentage of the building which each type of unit constitutes, and the maximum number of persons per unit; and (3) Summary of Estimated Costs, analyzing costs and available financial resources.

P - 65 January, 1969 - City Fact Sheet Re: the Area (2177)

This exhibit is a Housing and Development Administration, West Side Urban Renewal Site Office, Memorandum, by Jason R. Nathan, Administrator. The Memorandum is basically a fact sheet providing information regarding the boundaries; a brief history of the Area and the reasons for its decline; the original planning for the Area; acquisition of land by the City; population statistics; development plans for the project; progress to date; and community participation.

P - 66 February 23, 1968 - West Side Operations Bulletin No. 23 (2178)

This exhibit is the West Side Operations Bulletin No. 23 of the Housing and Development Administration, dated February 23, 1968, the subject of which is "Rehabilitation Procedures". This Bulletin outlines the steps involved in the rehabilitation of buildings in the Area. It provides for counseling of sponsors and property owners by the Rehabilitation Staff in the West Side Office; preparation of perliminary sketches

A-493

No. of Exhibit

by the staff architect; the filing of various forms if FHA mortgage insurance is desired; a relocation survey; approval of FHA minimum rents for tax abatements; preparation of a letter of eligibility for FHA tax benefits; attendance by a rehabilitation staff member at the Closing; and periodic inspections during construction by a member of the rehabilitation staff.

P - 67 — January 5, 1969 - West Side Urban Renewal Area Fact Sheet (2178)

This is a Housing and Development Administration West Side Urban Renewal Area Fact Sheet, dated January 5, 1969, with the number 70 written over the 69 in ink. The fact sheet contains information regarding the boundaries of the Area; the chronology of the Plan; the types of renewal projects in process; the number of dwelling units to be cleared or rehabilitated, and constructed; relocation statistics for residential and commercial tenants; and the uniqueness of the Project.

P - 68-A and 68-B id. — Louis Winnick Report on Economically Balanced Neighborhoods (2343)

These exhibits are excerpts from pages 41 and 42 of Ends and Means of Urban Renewal, which consits of papers from the Philadelphia Housing Associations' 50th Anniversary Forum. The particular excerpts are from a report submitted by Louis Winnick, Vice-Chairman of the Ford Foundation, on economically balanced neighborhoods. In the excerpts two caveats are offered regarding the inclusion of public housing in a redevelopment plan: (1) the goal of economic balance requires that new housing be restricted to middle and upper income groups because most renewal neighborhoods will continue to have a high proportion of low-income families in surviving structures; and (2) unless the quantity of public housing is limited sharply the market for adjacent new private housing may be lessened considerably, endangering the success of the redevelopment plan.

No. of Exhibit

P - 68-C id. — Report by Center for New York City Affairs of the New School for Social Research (2348)

This exhibit is an excerpt from page 23 of the Report by the Center for New York Affairs of the New School of Social Research. It questions the marketability of higher-rental fully taxpaying apartments in the Project because of the great amount of public housing in the Area.

P - 68-D id. — Cities In A Race With Time - Chicago's Hyde Park - Kenwood Urban Renewal Project (2349)

This exhibit is an excerpt from a study of Chicago's Hyde Park-Kenwood Urban Renewal Project, which begins on page 269 of Cities In A Race With Time, by Jeanne R. Lowe. The excerpt is from pages 270-]71. The excerpt relates community reactions to the reduction of the number of public housing units proposed for Chicago's Hude Park-Kenwood Urban Renewal Project from 600 to 60. The conclusion was that to maintain stable racial integration, the number of low-income, non-white families in public housing would have to be very limited. The comparatively well-off non-white families did not complain:

> "Some non-white homeowners felt that they had the most to lose if Hyde Park-Kenwood followed the course of racial turnover of other Chicago neighborhoods. As one expressed it to a white neighbor in Kenwood ..., you have some place to go. We haven't. If you leave, City services and police protection will go down. Will the schools stay as good?"

P - 68 - E id. — Cities In A Race With Time - New York City West Side Renewal Project (2349)

This exhibit is an excerpt from pages 272-273 in Cities In A Race With Time, by Jeanne R. Lowe,

No. of Exhibit

relating to the New York City West Side Urban Renewal Project. The excerpt diesusses the various reactions of different community groups to the Plan. At the final hearings on the Plan in 1962 a split between the Black and Puerto Rican communities occurred. The Puerto Ricans saw the proposed "balanced community concept" as a way to rid the Area of Blacks, Puerto Ricans and other low-income families. However, the Housing Section of the NAACP felt that to relocate every low income family within the Area would lead to a racially and economically inbalanced community, and therefore favored the proposal for 160 units.

P - 68 - F
id.

Neighborhood Groups and Urban Renewal by J. Clarence Davies, III (2355)

This excerpt from page 142 of Neighborhood Groups And Urban Renewal by J. Clarence Davies, III, discusses the Project. The excerpt refers to the fact that when the Board of Estimate unanimously approved the final plan it had changed from the originally proposed 400 low income units, 2400 middle income units and 5000 high income units to 2500 low, 4900 middle and 2000 high income units.

P - 68 - G
id.

January, 1974 - Stanford Law Review - "Integration For Subsidized Housing And The Question of Racial Occupancy Controls" (2355)

This exhibit is an excerpt from the January, 1974 Standord Law Review, an article entitled "Integration for Subsidized Housing and the Question of Racial Occupancy Controls", at page 251, under the heading of "The Tipping Phenomenon". The essential part of the excerpt is the definition of the tipping principle which provides:

> "The tipping principle states that white families will abandon and avoid a given neighborhood after the Black percentage of the population exceeds a certain point, usually assumed to be somewhere between 30 and 50 percent Black."

study was a departure from past practice in urban renewal

No. of Exhibit

P - 68 - H id — January, 1974 - Stanford Law Review "Integration For Subsidized Housing and the Question of Racial Occupancy Controls" (2355)

This exhibit is an excerpt from the January, 1974 Stanford Law Review, an article entitled "Integration for Subsidized Housing and the Question of Racial Occupancy Controls", at page 255. This exhibit cites Grodzins as recognizing a variation from neighborhood to neighborhood as to the actual tipping point based on the attitudinal composition of the white population and the different arrangements of environmental factors.

P - 68 - I id. — 1966 - Report on Neighborhood Conservation in New York City (2355)

This exhibit is an excerpt from the Housing and Redevelopment Board's Report on Neighborhood Conservation in New York City, published in 1966. It is from a paragraph entitled "Improving Intergroup Relations" which discusses "grey areas". The excerpt suggests that "grey areas" are ares that were predominantly white, might become Black, but were presently racially mixed. The excerpt suggests that many white residents did not welcome the change and thought it should be reversed or they would "escape" to the suburbs or other boroughs.

P - 69 — 1974 - Publications by Dr. Frank Kristof

A list of technical articles by Dr. Frank Kristof published between 1956 and 1973 in various magazines and journals.

P - 70 — May 17, 1974 - Statement of Frank S. Kristof (3500)

This exhibit consists of a statement by Frank S. Kristof, dated May 17, 1974, regarding the three annexed tables which Mr. Kristoff prepared at the request of the Court and Mr. Land. Table I, entitled "Basic Demographic and

A-497

No. of
Exhibit

Economic Date For New York City, Manhattan, Manhattan Community Planning District No. 7 and West Side Urban Renewal Area (Census Tracts 173, 177, 181): 1970", compares the 4 geographic areas mentioned in the title on several variables, based on 1970 Census data. The Area had a slightly larger percent white population (76%) than Planning District No. 7 (73%); which was slightly higher than New York City (67.7%) and Manhattan (60%). In the Area the percent of householders with single parent families with a female head and with children under 17 was 3%, which was substantially lower than Planning District No. 7 (9.7%), and somewhat lower than the City of New York (4.8%) and Manhattan (5.6%). In the Area 7.8% of the families were classified as poverty families, whereas the percent classified as poverty families were 8.7% in Planning District No. 7, 13% in Manhattan and 11.5% in New York City. The median income of families is $12,713 in the Area; $11,254 in Planning District No. 7; $8,983 in Manhattan; and $9,682 in New York City. Table 2, entitled "1970 Data For Racial Distribution of Households In New York City - Update of Tables 10, P. 29, Kristof Monograph - Housing Economic Facets of New York City's Problems" shows the demographic changes that have occurred from 1950-1970 by racial composition in terms of number and percent. In his statement Kristof points out that population in New York City did not perceptibly change between 1968 and 1970, but also points out that due to the small sample size there may be a fairly large sampling error in the 1968 figures. Table 3, entitled "Mid-West Side Population Trends" refers to population trends from 1960-1970 in Planning District No. 7. A substantial drop in Puerto Rican population was off-set by a slight increase in Black population because this increase occurred during a decrease in white and total population. Therefore, the figures do not support the forecast of a loss of diversity in the Area.

for new and rehabilitated housing developed under the Plan.

INTRODUCTION

A BRIEF ANALYSIS OF THE ISSUES INVOLVED

This action, sui generis in the annals of jurisprudence, seeks to enjoin the construction of one low income housing building to be located on Columbus Avenue between 90th and 91st Streets, known as Site 30 within the West Side Urban Renewal Area. The particular building will contain 160 residential apartment units, will be funded by the Department of Housing and Urban Development and will be managed by the New York City Housing Authority. This action is sui generis, not because it involves a low income housing project, but because of the legal theories propounded by plaintiffs to obtain an injunction.

The issues raised by plaintiffs are four. The first is whether HUD committed error in connection with its study approving the project made pursuant to the National Environmental Policy Act, 42 U.S.C. §§4321-4347, in failing to make a separate analysis of the sociological phenomenon known as "tipping"

(Tr. 48 and 49). The second is whether, based upon the factors of the neighborhood surrounding the location of the housing project, the construction of the housing project will cause the neighborhood to "tip" within the meaning of Otero v. New York City Housing Authority, 484 F. 2d 1122 (2d Cir. 1973) (Tr. 48 and 51). The third is whether there has been a breach of contract between plaintiffs Trinity Episcopal School Corporation and Trinity Housing Company, Inc. ("Trinity") and the defendant City of New York by reason of "the general changes in the West Side area after the fourth revision of the West Side Urban Renewal plan." (Tr. 48 and 51). The final issue is whether plaintiffs Karlan and Hudgins, based upon the contract between them and the City of New York, were required to give "written consent before there could be any change in the West Side Urban Renewal Plan and particularly on Site 30 [the location of the low income housing project]." (Tr. 48, 52).

DPL:ps

1. That the Urban Renewal Board make the necessary study of the income levels

A-500

Plaintiffs' counsel has stipulated that these four issues are the "totality of the issues ... involved in disposition of the entire litigation on the merits." (Tr. 55). Accordingly, we will address solely these issues.*

In respect of these four issues, the position of the defendants, briefly stated, is as follows:

First, as to HUD's study pursuant to NEPA, no administrative error was committed in failing to analyze the "tipping" issue in terms of the fears of people and the sociological propensities of low income people. Those factors are not measurable and therefore irrelevant. The relevant factors in respect of tipping are population statistics and community facilities and services. Those factors were considered by HUD in its NEPA study; thus no administrative error exists. In Hanly v. Kleindienst, 471 F.2d 823, 833 (2d Cir. 1972), the plaintiffs contested the Government's failure to consider, pursuant to its NEPA study, the "psychological and sociological effects" upon the residents of the Foley Square neighborhood of the building of a jail in the Court House annex. The Second

---

* Plaintiffs made a post-trial oral motion that regardless of the outcome of this action they be awarded counsel fees from the defendants. That issue is addressed in Point IV of this memorandum.

Circuit found that an analysis of such considerations was not required by NEPA. This view has been followed in Nucleus of Chicago Homeowners Association v. Lynn, ____ F. Supp. _____ (N.D. Ill, 1973)* which held that alleged anti-social propensities of low income persons and their effect upon middle income persons was not required to be studied by HUD in its NEPA findings in respect to construction of a low income housing project. Moreover, contemporaneous with its findings under NEPA, HUD also made findings pursuant to its Project Selection Criteria study and the two findings constitute an inseparable administrative record. The Project Selection Criteria study did analyze in greater detail than the NEPA study, the elements of "tipping" and concluded that tipping would not occur. Plaintiffs' counsel has stipulated that as to that "site selection criteria study, we take no issue with the conclusions they [HUD] arrived at there." (Tr. 43).

---

* A copy of this opinion is set forth in the Appendix as Exhibit A.

The number of tax-abated units was increased to 4,200.

Second, as to the issue of neighborhood "tipping" and the cause of action authorized by Otero, the facts adduced at trial overwhelmingly prove that the West Side neighborhood is not in any danger of tipping. In Otero, the Second Circuit held that the New York City Housing would not be required to follow its relocation regulation when to do so would cause the relevant neighborhood to tip an existing 50-50 racial balance toward the ghettoization of the community. The relevant community involved in Otero had changed from about 40% non-white to about 50% non-white in recent years, and the tenancy of the housing project pursuant to the relocation regulation would have led to further non-white concentration. Plaintiffs in the instant case do not establish a cause of action pursuant to Otero. The relevant West Side community has a population of about 212,000, with 73% white, 17% Puerto Rican, and 10% black. This population mix has remained stable over recent years, and the percentage of blacks and Puerto Ricans is 6% less than New York City and 13% less than Manhattan. The construction of the proposed project with 160 units and about

576 people will not — as a mathematical certainty — alter the population mix to any perceptible degree. Thus, there is neither a concentration of minorities within the relevant community, nor will the construction of the housing project cause such a concentration. Other undisputed facts establish that the median income of the relevant community is greater than Manhattan and New York City, and the per cent of single parent families with minor children is less than Manhattan and New York City. Thus, statistically, the relevant community is stable. Also, it is undisputed that in recent years, crime within the community has decreased, the public schools are underutilized and improving, public recreation is available, there is adequate transportation to jobs, and the community has sufficient and adequate retail commercial establishments to serve the people. Thus, the social amenities of a stable community are present. Finally, there has been no proof of a panic flight of the white middle class from the area, and the available statistics show that in recent years there has been a decreasing resale of brownstones and those that are sold are sold at increasing prices. The West Side area is not in danger of tipping.

businesses in the area, providing for temporary quarters

Third, the breach of contract issues have been merged into the tipping issue because plaintiffs' counsel stipulated during the trial that a breach of contract would not give rise to relief, unless the breach would cause neighborhood tipping. However, we have briefly examined the contract issues as distinct and separate from tipping. Trinity properly asserts that its contract with the City contained a "Whereas" clause which incorporated by reference the 1966 fourth revision of the Urban Renewal Plan. The philosophy of the Plan called for a racially and economically integrated neighborhood, but nowhere in the Plan was there a specification of the total amount of low income housing units, a percentage of low income people, or a percentage of minority people. Demonstrably, the current statistics for the area plus the projected construction will result in a racially and economically integrated neighborhood. Accordingly, recent changes in the Plan result in no breach. Furthermore, the Plan itself contemplates changes within the Plan not requiring the consent of any person, other than the owner or lessee of the particular parcel of property involved with the

change. In connection with Plan changes, it must be borne in mind that as of 1963, five sites, including Site 36 but not Site 30, were designated for low income housing projects. As of 1966, the designation of Site 36 was changed from low income to middle income and the total low income housing sites was reduced to four. Subsequently, Site 30 was changed from middle income to low income, and the total of five low income sites contemplated in 1963 was fulfilled. Thus, the change in respect to Site 30 results in no net change in the total number of low income sites originally planned and the redesignation of Site 30 does not result in a breach of the original philosophy of the Urban Renewal Plan. Also, one representative of Trinity alleges that he was told by the Chairman of the Housing and Redevelopment Board that Trinity could rely upon the site designations as permanently fixed and that Trinity relied upon this oral representation upon entering into its contract with the City. In respect to such oral representation we submit (1) that pursuant to the rules of evidence such testimony was inadmissible and

(2) the evidence adduced at trial proves that such oral representation was probably never made at all. Even if such oral representation were made, there is no proof that breach of the oral representation will result in any injury to Trinity. Trinity asserts that the general philosophy of a racially integrated neighborhood meant not more than 2,500 low income housing units and not more than 30% low income housing units for the West Side Urban Renewal area. The facts proved at trial establish that the maximum 2,500 low income units and a 30%-70% ratio was not a proper interpretation of the philosophy of the Plan; and even if it were, the construction of Site 30 as a low income project will not violate such limits. Finally, plaintiffs Karlan and Hudgins have no contractual right to veto changes of site designations within the West Side Urban Renewal Area, and thus their written consent to convert Site 30 to a low income housing project was not required.

DPL:rs

HISTORY AND CURRENT STATUS OF THE WEST SIDE URBAN RENEWAL PLAN

A. The Concept of Urban Renewal:

The West Side Urban Renewal Plan was originally formulated in the 1950's as a result of changes both in the law and in the concept of urban renewal.

With amendments to the National Housing Act in 1954, "deteriorating" areas could for the first time be designated for urban renewal, making it possible to conserve and rehabilitate sound buildings, rather than undertake total demolition and clearance of an area (Fried, Tr. 468-470). These amendments were followed in 1957 by State enabling legislation granting powers of eminent domain, expenditures of public funds and other powers for areas designated to be "deteriorating". (See New York City Planning Commission, "Urban Renewal", Ex. A, pp. 12-13.)

In terms of planning, new concepts were being developed. The prior tragic experiences of slum clearance and urban renewal as "human removal", the massive dislocation of thousands of families, came to be met with increasingly effective community and political opposition (Browne, Tr. 3521, 3547-3548). The desire to minimize the effects of relocation is evident in all of the studies and resolutions that document the formulation of the West Side Urban Renewal Plan.

rs

The ideas of James Felt, as Chairman of the City Planning Commission, conceived as methods to reduce the devastating effects on a community targeted for urban renewal, are embodied in the study of the Commission of what came to be the West Side Urban Renewal Area (Ex. A).

The study found that the Area, while deteriorating, had a number of strengths. Its proximity to adequate public transportation, and to Central Park and Riverside Park, had always made it a favored and desirable residential area. Much good housing stock, especially along Central Park West, remained.

Moreover, the population trends presented a complicated picture. Despite a persistent notion that during the 1950's there were white, middle-class families moving out, and poor black and Puerto Rican families moving in*, it was found that in the period of 1950 to 1956, during a period when the Puerto Rican population increased in the Area almost eightfold, a majority of families moving in were white, non-Puerto Rican. Furthermore, a one-third increase of the median income suggested that those white families must have had an above-average income to compensate for the low incomes of the newly arriving black and Puerto Rican families (Ex. A, pp. 10-11). Even in the 1950's, there was no "tipping".

*Tr. 1691- Sulzberger; Tr. 2724- Gaynor.

DPL:rs

A-509

The object of urban renewal for the Area, therefore, was to arrest its deterioration. There is no intention shown by the City Planning Commission to create a wholly new urban community. On the contrary, the preservation and improvement of an old community was the objective:

> What are the yardsticks against which a successful renewal plan should be measured? A reduction of the abnormal population turnover and elimination of the excessive overcrowding which contribute so greatly to the Area's decline. Maintenance of the economic and ethnic integration which is part of its tradition, is in accord with acccepted City policy, and which will take into account the needs of its present population. Economy in the use of available public funds, for which there is increasing competition, and the encouragement and stimulation of maximum private investment and effort in the renewal process. Good individual design and harmonious area planning. Effective utilization of the existing housing stock. The approximation of existing population densities after renewal in view of the Area's location in central Manhattan, but no substantial increase in density. Increase in the Area's tax return to the City. Active and sustained community participation. (Ex. A, p. 12).

It was also among the conclusions of the study that the effects of relocation could be minimized, both because total clearance would not be undertaken and because the renewal process would take place gradually over a period of time. (Ex. A, p. 4).

While it was recognized that some persons would have to be relocated outside the renewal area in order to relieve overcrowding (Ex. A. p. 4) the object was to "disturb the continuity of neighborhood life as little as possible." (Ex. A, p. 13).

DPL:rs

The ways in which the City Planning Commission study was a departure from past practice in urban renewal is well illustrated by the experience of the Park West Urban Renewal Area, just north of the West Side Urban Renewal Area, 97th to 100th Streets, Amsterdam Avenue to Central Park West. This development became Park West Village, with 2,700 apartments and three buildings for commercial tenants. (Ex. AE, N.Y. Times article, dated May 18, 1972). All of the apartments rent at market level, with no leased public housing units (Tr. 793, Fried). As Dr. Henry J. Browne testifed, the housing which was built was too expensive for those who had lived there and the same families did not qualify for public housing (Tr. 3510), and in vivid illustration of what relocation meant, Dr. Browne recounted:

> . . . I remember Father Raferty at Holy Name parish summing it up - before the renewal there were 400 children from those couple of blocks at the school and after the renewal there was one, the child of the superintendent. (Tr. 3511).

B. The Preliminary Urban Renewal Plan:

The Preliminary Plan adopted for the West Side Urban Renewal Area in 1959 (Ex. 5) dealt in some detail with methods of financing to provide housing at moderate rent levels, about $22 to about $45/$50 per room per month.

It was recommended that of approximately 7,400 dwelling units planned for new construction, one-third would be in the moderate rental range, two-thirds fully tax paying. (Ex. 5, p. 20).

State-aided public housing was to provide units at $14 to $18 per room per month. Other than consideration being given to additional public housing units in rehabilitated structures, only one site for public housing was contemplated in the Plan - what came to be Stephen Wise House on Site 29 (see Preliminary Plan Map, inside back cover of Plaintiffs' Exhibit 5). Plaintiffs have asserted that full economic integration was the original philosophy of the Plan. (Ex. AM - Continue's Statement of Principle and Purpose). However, that concept is not evident in the Preliminary Plan.

The failure of the Preliminary Plan to provide for adequate low and moderate income housing became the focus of community opposition. The City Planning Commission study (Ex. A, p. 66) had expressed the intent of reducing the effects of dislocation in part by providing for low and moderate income housing, and many community groups and leaders thought that the provisions for these programs had to be increased in order to give meaning to the commitment

DPL:rs

to what was to be termed "area priority", the right of the residents of the 20 square block area to first priority for new and rehabilitated housing developed under the Plan. (Tr. 3674 - Mollen; Tr. 3515 - Browne).

The hearing for approval of the Preliminary Plan by the City Planning Commission was held on June 29, 1959, (Ex. 6). In addition to the inadequate provisions for low and moderate incoming housing, there were primarily two other objections to the Plan: unsatisfactory relocation provisions for businesses, and unnecessary demolition of buildings (p. 7). The Planning Commission report of the hearings detailed aspects of the Plan which were departures from practice of other urban renewal projects, among them:

> It is the first project conceived with an attempt to preserve the structure of the community, to seek genuine citizen participation and to carry out relocation under direct city supervision before sites are made available for redevelopment. (p. 8)

In evaluating the objections and recommendations which had been brought before the Commission at the hearing on June 29, the report stated:

> In weighing the policy goals of urban renewal as they apply to the West Side Area, it is also important to consider the stated goal of community participation. In light of the strong expression of the community for additional units of low-income public housing and moderate rental private housing, to ignore such requests, where there is a degree of flexibility sanctioned, would vitiate the spirit of community participation. (p. 9).

DPL:rs

In an effort to balance the desires of the community with the "planning needs of the entire West Side, the general needs of the City, and the continuing vitality of the program of the City" (p. 10), the Commission recommended that the number of low rent units be increased to 800, by providing for 200 additional public housing units and approximately 200 low rent units in rehabilitated buildings. In addition, the proportion of tax-abated housing in the 7,200 units of new construction- exclusive of public housing construction - was increased from 1/3 to 1/2, to plan for 3,600 units of housing renting at $21 to $29 per room per month (p. 10).

Again, it should be noted that the goal of a socially and economically balanced community was not expressed in terms of economic integration within a single building; rather, the concept of low-rent housing was in terms of small, "vest-pocket" projects and low-rent rehabilitated buildings.

After approval by the City Planning Commission, public hearings were held by the Board of Estimate on September 17 and October 22, 1959. The resolution adopted by the Board of Estimate on October 22, 1959 (Ex. 7) is instructive and reflects the Board's concern for adequate relocation plans and providing housing within the Area for Area residents. The first five modifications passed by the Board of Estimate are as follows:

and Trinity House (Site 24), which employed the leased public

H-514

DPL:rs

1. That the Urban Renewal Board make the necessary study of the income levels of 100 per cent of the people now residing in the redevelopment and rehabilitation areas, or as near that percentage as possible, and based on those findings, provide an increased number of middle-income and low-rent units within the project area more in line with the needs of the people in these categories and advise the Board of Estimate, two months before submitting a final plan, as to the location and quantity of required middle-income and low-rent units to be provided to house all the people in these categories.

2. That the minimum goals for low-rent shall be 1,000 units and the minimum goals for middle-income shall be 4,200 units.

3. That the project be developed at densities which will maintain, in general, the present overall population density.

4. That the construction of new buildings and the rehabilitation of existing buildings be so planned that, after a minimum initial dislocation of families, new buildings will be erected before dislocating further families; and those in the area next scheduled for demolition or rehabilitation will be given the opportunity to move into the newly-completed buildings.

5. That people be permitted to study the relocation plan and site priority machinery and have the opportunity to make recommendations to the Urban Renewal Board before the final plan is formally submitted to the Board of Estimate for adoption.

In the remaining recommendations (Nos. 6 through 10), the Board of Estimate dealt with commercial relocation problems in considerable detail, among them that a system of priorities be worked out for existing businesses and that methods of locating commercial space at reasonable rentals be explored, that a specialized staff and advisory group for business relocation be set up, that provisions

12 U.S.C. §1715 z-1. The interest subsidy, which is the

for temporary quarters during the relocation period be made and that the final plan include recommendations for priority and assistance.

The direction provided by the Board of Estimate resolution led to great community activity, and controversy as to whether to stay with the Plan's provision for 1,000 units of public housing or to increase it, the figure generally talked about being 2,500 (Tr. 3519 - 3520 - Browne).

Milton A. Mollen, who had become Chairman of the Housing and Redevelopment Board in February, 1962, (T. 3670), testified as to his experience with meeting with the community to seek acceptance of the Plan.

> We started to zero in on obtaining approval of the West Side Urban Renewal Area and in order to do this I and my colleagues and staff members engaged in a constant ongoing series of meetings with community groups, potential sponsors, and everyone else, to try to come up with a final plan which would meet basically the needs and aspirations of the majority of the people in the area. (Tr. 3676)

C. The Final Urban Renewal Plan:

The Final Plan was approved by the City Planning Commission on May 29, 1962. As is detailed in the report of the Commission (Ex. 8) the Plan now had additonal provisions for low and moderate income housing.

DPL:rs

The number of tax-abated units was increased to 4,200. The proposal for 200 units of public housing in rehabilitated buildings was confirmed, in additon to the previous proposal for 1,000 units of newly consturcted public housing. The major innovation was to provide for 15% of the 4,200 middle-income units (630) to be available at rents comparable to public housing, approximately $18 per room per month. The program under which these 630 units were to be provided was the so-called skewed rental program, a method by which a certain proportion of units within a building would be charged rent at public housing levels with the difference between those rents and what normally would be charged being made up by increases of the rents of the middle-income units. (Tr. 3163-Hazen).

The Final Plan now had more specific provisions to minimize the disruptive effects of relocation. It was proposed that the 20-block area would be redeveloped in three stages: Stage I from 93rd to 97th Streets, Stage II from 90th to 93rd Street, and Stage III from 87th to 90th Streets (Ex. 8, p. 1). Furthermore, the construction of the new public housing had already begun in advance of the approval of the Final Plan. In particular, the Stephen Wise House (Site 29 between 90th and 91st Streets, Amsterdam and Columbus Avenues) with 399 units (Ex. S) was approved by the City Planning Commission and the Board of Estimate in 1959.

DPL:rs

The commitment to an absolute priority to relocatees for [illegible] the decisive factor

The Pilot Rehabilitation Project, comprising 81 brownstone buildings, on 94th and 95th Streets between Central Park West and Columbus Avenue, had previously been approved by the City Planning Commission and the Board of Estimate in 1960. (The Pilot Project Plan, dated April, 1960, is incorporated in the contract between the Trinity Episcopal School Corporation and the City of New York, (Ex. 14)). The purpose of the Pilot Project was "to establish more refined standards and to explore feasible methods of rehabilitation" (Ex. 8, p. 3).

Another undertaking of the City Planning Commission looking towards the development of the West Side Urban Renewal Area was the designation in 1961 of a large area of the West Side as a "Neighborhood Improvement District" known as the "West Side Services Area" which, to quote from the Commission's report:

> would provide a concentration of social, planning, health, safety and other services along with vigorous code enforcement and assistance in relocation from seriously over-crowded unsafe and/or unsanitary dwellings. (Ex. 8, p. 3).

Among the other subjects of importance running through the Commission's report are community participation, including community and neighborhood group sponsorship of middle-income housing (p. 10), and the recognition of

carrying forward the development of the Area (Mollen,

PL:rs

the importance of satisfactory relocation plans for small businesses in the area, providing for temporary quarters during development and priority in the new construction. (p. 8).

D. The Commitment to A Minimum of 2,500 Low-Rent Units:

A booklet entitled "West Side Urban Renewal Area, A Summary of the Final Plan" (Ex. 10), which was printed and distributed in the community in an effort to win acceptance of the Plan (Tr. 3524-3526 - Browne), stated that 5,418 families occupied units in the Area which were to be rebuilt or replaced and thus these families would be relocated "into new housing in the area, or into other neighborhoods." (p. 11). It was also stated that relocatees would receive "absolute priority in all new housing built under the Plan." (p. 11).

But for many in the community, the priority for relocatees to new housing was a hollow promise, unless the Plan provided all relocatees with housing they could afford. Consequently, on the eve of the Board of Estimate hearing on the Final Plan, scheduled for June 22, 1962, a meeting was called by Mayor Wagner to decide whether to raise to Plan's commitment for low-rent units to 2,500 The meeting was attended by among others Deputy Mayor O'Keefe, Milton A. Mollen, Chairman of the Housing and Redevelopment

DPL:rs

Board, Walter Fried, a member of the Board, James Felt, Chairman of the City Planning Commission, and Herman Badillo, Deputy Commissioner of Relocation in the Department of Real Estate. (Tr. 832-837 - Fried; Tr. 3836 - Badillo).

As Mr. Fried testified, Mr. Badillo's position was that the 2,500 had to be a minimum figure. (Tr. 923).

As Deputy Commissioner of Relocation, Mr. Badillo had drawn up the relocation plan and was undoubtedly closer to the realities of what was involved in providing sufficient housing in the Area for those who would be dislocated. The statement which Mr. Badillo read to the Board of Estimate on June 22, 1962, sets forth in considerable detail the relocation plan. It was estimated that 6,344 households (single persons or families) would be displaced - of whom the largest portion would be from Stage I (2,707 households).

The estimate of 6,344 households (Ex. D, p. 6) was derived from a 1959-60 survey, with an adjustment made for those already relocated from sites in the Area where construction had already begun, including the Stephen Wise public housing site and the P.S. 84 Site. Because the study was about two years old, Mr. Badillo pointed out that many single people had moved out and were replaced by families. (Tr. 3837-38 - Badillo). Consequently, the dimensions of the relocation problem were in all probability greater than the 1959-1960 survey indicated.

DPL:rs

Of the 6,344 households, 4,739 were eligible on the basis of income for public housing. Of the 3,326 households in Stage I, 2,485 were eligible. (Ex. D, p. 6).

Because of his familiarity with the relocation problems, Mr. Badillo felt that the commitment to 2,500 low-rent unit had to be a minimum. (Tr. 925 - Fried; T. 3836 - Badillo) This was the position which Mayor Wagner accepted (Tr. 838, 923 - Fried).

Mr. Mollen did not think of the commitment as either a minimum or maximum, but his understanding of what the commitment meant was the same:

> I thought of it as the number of units we were going to provide to accommodate the families, low-income families who were on site tenants."
>
> * *
>
> We did have a large number of low-income families and one of the purposes was to accommodate as many on site families as we could possibly accommodate.
> We decided that 2,500 would hopefully help us to achieve that result.
> (Tr. 3677-78).

Mayor Wagner's announcement of June 21, 1962, (Exhibit H) detailed the means by which the 2,500 units would be provided.

DPL:rs

In addition to the 1,000 units of new public housing construction contained in the Final Plan as approved by the City Planning Commission, 1,010 low-income units within middle-income buildings were to be provided instead of the 630 called for in the Final Plan as approved by the City Planning Commission. This was to be achieved by increasing the number of middle-income units by 700 (from 4,200 to 4,900) by converting three sites within the Area from fully tax-paying projects, and increasing the percentage of skewed rental units within the tax-abated projects to 20%*. 280 units were to be provided by the Housing Authority in rehabilitated brownstones. Finally, 210 additional units of public housing were to be built on the abandoned P.S. 93 site, just adjacent to the Urban Renewal Area at 93rd and Amsterdam.

*20% of the projected 4,900 middle-income units is only 980. Where the additional 30 were to come from is not clear from the statement. Perhaps these were to be in the building to go up on the last vacant site in the West Park Urban Renewal Area. The Mayor's statement directs that the site designation there be changed from fully tax paying to middle income.

DPL:rs

It is important to emphasize that the P.S. 93 site was the only public housing site adjacent to the Area which was included in the calculation to meet the 2,500 commitment. The Douglass Addition and the project at 830 Amsterdam, also near the Area, were mentioned as offering possible additional units for relocatees, but these two sites were not included within the 2500 figure. As it turned out, however, the first priority for the Douglass Additon went to the large families in Douglass Houses, and the first priority for 830 Amsterdam Avenue went to those displaced from that site (Tr. 3533-3534 - Browne). Consequently, these two projects did not serve the Urban Renewal Area relocatees to any significant degree.

E. Execution of the West Side Urban Renewal Plan from 1962 to 1968:

From its first years, the development of the Plan encountered delays and numerous administrative problems. Originally, estimated to require seven and one-half years to complete all three stages (Ex. 8, p. 8), the Area is only about two-thirds completed to date.

As promised, public housing construction came first. Sites 15 (120 West 94th Street), Site 25 (74 West 92nd Street), Site 29 (Stephen Wise Towers) and Site 38 (589 Amsterdam Avenue) were all ready for occupancy in 1965 (Ex. S).

DPL:rs

persons or families who moved in and

DPL:rs

The first two amendments to the Plan carried forward proposals for public housing. The first amendment approved a plan for the acquisition and rehabilitation by the Housing Authority of 36 brownstones (Ex. 11). This plan was again in the "vest pocket" concept. For example, on 91st Street, eleven contiguous brownstones (street numbers 22-42) were rehabilitated for public housing units (Ex. 11).

Changes made in connection with the second amendment provided for, among other things, a new public housing project, on Site 36, located between 89th and 90th Street, on the east side of Columbus Avenue (Ex. 15). Until Site 36 was redesignated a second time in 1966, it had been planned for 215 public housing units (Ex. 2, p. 2).

Also in connection with the second amendment to the Plan, three sites which had formerly been approved for fully tax-paying housing were redesignated as partially tax-exempt housing. In approving these changes, the City Planning Commission noted its previous statement in connection with the adoption of the Final Plan:

DPL:rs

> There is no method by which we can predict the exact proportions in which to allocate the number of dwelling units at each rental level in order to achieve the broad objective of the Urban Renewal Plan. (Ex. 15, p. 4)

After the four public housing sites completed in 1965, the next cycle of buildings to be ready for occupancy were four Mitchell-Lama cooperatives (Sites 8, 11, 16, and 17), using the skewed rental method for low-rent units, and a Mitchell-Lama rental building (Site 14), using the State Capital Grant Assistance Program for low-rent units. These five projects opened in March - May, 1967 (Ex. S).

By the time these first Mitchell-Lama developments opened, a sharp increase in construction costs threatened the ability of the City to meet its commitments for adequate low and moderate income housing. Between 1964 and 1967, both because of construction costs and the increase of interest rates, Mitchell-Lama rents rose from about $30/$35 per room per month to about $65 per room per month. The increase was so drastic that for a while the program was suspended.

DPL:rs

Not only was Mitchell-Lama no longer a program for moderate income persons, but its projects were not marketable at rents that high (Tr. 2657-2660 - Kristof).

This increase of costs thereatened not only the plans to provide for moderate income units but threatened the skewed rental program as a means of providing units at rents equivalent to public housing. There was a limit to how much differential between the skewed rental units and the other units would be feasible. Even before the drastic increase of costs in Mitchell-Lama developments began, the skewed rental units did not rent at levels equivalent to public housing. Mrs. Elaine Schwartz, who as executive director of the sponsor of Columbus Park Apartments (Site 16), testified that the skewed rental units increased from an original projection of $18 per room to $22 on the date of occupancy in April, 1967, (Tr. 3431; Ex. S). Moreover, Columbus Park and the other three projects opening in 1967 with skewed rentals were cooperatives, and the requirement for down payments was also a factor making the skewed rental units beyond the reach of many low-income families. (Tr. 3531-Browne).

The jeopardy in which the original commitment to low and moderate income housing was placed in this period

DPL:rs

is evident in the statement made by Jason R. Nathan, Administrator of the Housing and Development Administration, before the Board of Estimate on December 9, 1966, in support of the fourth amendment to the Plan (Ex. 2). In that statement, Administrator Nathan acknowledged that the City's commitment to 2,500 low-rent units in that area had been only a hope, largely because the only program available, other than public housing construction, was the skewed rental program. The statement recognized the doubts of some of whether the program would work. Consequently, it was announced that in addition to skewed rental units in cooperative projects, 400 units in proposed developments would be provided by the Housing Authority under the leased public housing program, and a minimum of 306 units under the State Capital Grant Assistance Program (Ex. 2). The capital grant program was used for the first time in Independence House (Site 14) which opened in April, 1967, for the elderly (Tr. 3532 - Browne; Ex. S). That program also had limited usefulness in providing for relocatees, in particular the lack of willingness to take welfare families (Tr. 3532 - Browne).

PL:rs

F. Execution of the West Side Urban Renewal Plan from 1968 to 1973:

In 1968, only two developments opened: Jefferson Towers, (Site 12), a cooperative using skewed rentals, and West Side Manor (Site 13), a rental project with capital grant units (Ex. S). In 1971, the year during which the Plan was originally projected to be completed (Ex. 8, p. 8), only three more Mitchell-Lama developments opened (Ex. S). Two of these, for, the first time, were required to allocate 30% of their units to a low rent program: Central Park Gardens (Site 6) with capital grant units (see statement of Jason R. Nathan, October 25, 1967, p. 3*)

* This statement is Ex. E to the affidavit of Rev. Thomas Farrelly, dated September 11, 1973, and a part of the papers submitted by Strycker's Bay Neighborhood Council, Inc. in opposition to the motion for a preliminary injunction.

and Trinity House (Site 24), which employed the leased public housing program for the first time (Ex. S). Neither Mr. Eliot Lumbard, Trinity's representative, nor Trinity's counsel were aware of the fact that Trinity's contract specifically required this 30% low rent formula (Tr. 1034-1036). Previously, moderate rental buildings were required to allocate only 20% of their units to skewed rentals or capital grants. Often, however, the requirement was not met. Westgate (Sites 1,2,3) presently is 11 units short of its required 20% and Central Park Gardens (Site 6) is 31 units short of its required 30%.

The dilemma presented by the Mitchell-Lama Program, that it could no longer provide housing for moderate income persons, and in fact had become a luxury program (Tr. 3801 - Goodwin), made it incumbant upon the City to find a new means to meet its commitment to provide moderate income housing. The answer, a most imperfect one, was the Federal "§236" program, which came into existence in 1968. See

12 U.S.C. §1715 z-1. The interest subsidy, which is the feature of the §236 program, is a subsidy equal to:

> the difference between the monthly payment for principal, interest, and mortgage insurance premium which the project owner as a mortgagor is obligated to pay under the mortgage and the monthly payment for principal and interest such project owner would be obligated to pay if the mortgage were to bear interest at the rate of 1 per centum per annum." 12 U.S.C. §1715 z-1(c).

In combination with Mitchell-Lama financing, rents could be cut almost in half. (Tr. 3167-Hazen).

The drawback of the §236 program is the relatively low-income limitations - persons to be eligible must have an income no greater than 135% of the limit for the public housing eligibility.* However, 20% of the total amount of interest reduction payments can be made for families whose incomes exceed this 135% formula, providing that the incomes of these families do not exceed the income limitations of the §221(d) (3) program. 12 U.S.C. §1715(l)(d)(3). The latter formula is the so-called "exception limit." To illustrate what these formulas mean, a family of four must have an annual income (after the permitted deductions)

---

* The income of an applicant for §236 housing is his annual income minus certain specified deductions. See Ex. 53.

of no more than $12,150 under the formula based on 135% of the public housing eligibility limit, or $13,250 under the exception limit.* The program thus excludes families with incomes in excess of these limits who might also find beyond their means the Mitchell-Lama projects, which without any additional subsidy would be renting at about $100 per room per month, or more. (Tr. 3166 - Hazen; Tr. 3758 - 3759 - Sanderson).

The first projects built in the West Side Urban Renewal Area using the combination of subsidy programs, Mitchell-Lama and §236, were Columbus Manor and Westwood House (Sites 21 and 22) both of which opened in June, 1971. The third was Leader House, which opened in August, 1972. All used the leased public housing program for 30% of its units (Ex. S).

At the same time, the Department of Social Services was paying rent for families and individuals receiving public assistance at levels equal to rents charged in §236 projects. (Tr. 3194-Olinger). This meant that welfare families could be placed even in units which were not allocated to the leased public housing programs.

---

* See the enclosures annexed to the letter of June 3, 1974 by Robert Liner, Esq., Assistant Corporation Counsel, to the Honorable Irving Ben Cooper.

DPL:rs

The commitment to an absolute priority to relocatees for newly constructed housing was the decisive factor. As David S. [illegible]inger, at the time Deputy Commissioner of Community Development of HDA, testified:

> . . . we found ourselves in the position where people who waited for years for apartments on the West Side would now be eligible by reason of their being able to pay the rents that these buildings commanded. (Tr. 3194).

As a result of this policy decision, welfare families in Leader House, Columbus Manor and Westwood House occupy between 10% and 20% of the units other than those allocated to the Housing Authority.

DPL:rs

Amidst all the complications and delays in carrying forward the development of the Area (Mollen, Tr. 3672-73) the commitment to a minimum of 2500 units of low-rent housing was also far from being fulfilled as the 1960s ended. As of January 1969, 1,230 public housing units had been completed (Ex. 65). At the end of 1969, only ten moderate income building were completed, only one of which, Trinity House, contained a 30% allocation with a realistic and workable low-rent program.* With §236 subsidies in short supply (Tr. 3173-Hazen), the commitment to the relocatees would take several years to fulfill, at best, if allocations in middle-income buildings were relied upon for the balance of low-income units.

Morever, Site 36 which had been planned as the fifth public housing site was converted back to a moderate rental designation in conjunction with the approval of the fourth amendment to the Plan in December 1966 (Ex. 2). This was done to sponsor the site as a cooperative under the §221(d)(3) program (Tr. 3512 - Browne),

* Trinity House is at present 3 units short of its required 30% allocation.

DPL:rs

with low-rent units provided by the rent supplement program. 12 U.S.C. §1715 L (1964), as amended; 12 U.S.C. §1701 S (h)(1)(A). At present, Turin House has only 16 units of 189 under the rent supplement program (Ex. S).

Thus, many community representatives saw the need for additional public housing construction. This seemed to be a logical adjustment to make in the Plan, for not only were the §236 subsidies in short supply, but a direct public housing construction program was available (Tr. 3173-74 - Hazen)

In 1970, officials of HDA meeting with Strycker's Bay and the local planning board selected Site 4 (between 96th and 97th Street, west side of Columbus Avenue) for a new public housing project. Site 4 was particularly appropriate because it could be built in conjunction with a new school planned for the same site (Tr. 3174 - Hazen; Tr. 3190 - Olinger). The proposal for the conversion of Site 4 to public housing came before Community Planning Board No. 7 and was approved almost unanimously in July 1970 (Tr. 3618 - Schwartz).

DPL:rs

It was approved by The City Planning Commission on August 12, 1970 (Ex. 24) and by the Board of Estimate on September 17, 1970 (Ex. 28). Currently there are no available funds to construct Site 4.

The same considerations that led to the conversion of Site 4 to public housing resulted in the proposal to select Site 30 for a new public housing site, particularly the lack of subsidies for moderate income housing and relocation needs. Again, the proposal was approved overwhelmingly in July 9, 1971 by the Planning Board (Tr. 3618 - Schwartz), by the City Planning Commission on August 11, 1971 (Ex. 26), and by the Board of Estimate on November 11, 1971 (Ex. 27). The Plan and Project for Site 30 prepared by the City Planning Commission (Ex. 26) shows that there was considerable opposition to Site 30, not because of its low income designation but because the construction of Site 30 would require demoliton of existing buildings occupied by low income families and some people favored rehabilitation of the existing buildings for the benefit of these low income families.

DPL:rs

G. The 70/30 Concept:

The 70/30 ratio - 70% middle income, 30% low income- is a concept much discussed in the community of the Urban Renewal Area. For some it is the fundamental principle of the Plan (Tr. 1177-Hudgins; Tr. 2399 - Sours). As one witness, Mr. Bernard Wohl, put it: "There is a magic opinion in our community, about 70/30." (Tr. 3231).

But the history of the development of the Area demonstrates that the concept is more of a notion than a reality. A 30% allocation for low rent units in a development did not even come into existence until 1969 (Ex. S). Of the four projects which opened in 1971, two of them, St. Martin's Towers (Site 31) and Turin House (Site 36), have only 11% and 8% respectively allocated to a low rent program (Ex. S).

As a general guide to planning, the proposal did not come before the Community Planning Board until late 1972 (Tr. 3615) after the conversions of Sites 4 and 30 to public housing.

PL:rs

As Irvin Schwartz, at the time Vice-Chairman of the Planning Board, described it in his testimony, the 70/30 proposal was a very specific one:

> It was presented to us [by the legislators representing the Urban Renewal Area] and my understanding was that it was a recommendation that the remainder of the West Side Urban Renewal area should be 30 per cent public housing and the other 70 per cent was to be middle income financed under 236 or other available programs for middle income housing. (Tr. 3616).

H. The Squatters:

One of the most controversial events which has happened in the long development of the West Side Urban Renewal Area, was the arrival of the squatters in April, 1970.

DPL:rs

The squatters, persons or families who moved in and occupied City-owned, and sometimes privately-owned buildings, which were vacant (Tr. 3170 - Hazen), were not a new phenomenon in the urban renewal experience of the City (Tr. 3208 - Olinger). The squatter families were motivated to occupy these buildings in the area because of the crowded and substandard housing and deplorable living conditions in which they had previously lived. (Tr. 3460 - 3461 - Farrelly). Within the Urban Renewal Area, the squatters occupied City-owned buildings on the north side of 88th Street near Columbus Avenue (Tr. 1818-1820 - Liebert) as well as on 89th Street (Tr. 3462 - Farrelly). Eventually the City certified that the previous housing of about 180 squatter families was substandard and entered into rental agreements with these families permitting them to remain in the City-owned buildings scheduled for demolition until demolition was ready to proceed. (Tr. 3461 - Farrelly; Tr. 3171 - Hazen) In the meantime, the squatter families have through their own energy and efforts fixed up the condition of these buildings, which while standing empty were fire hazards and an attraction to derelicts and vandals. (Tr. 3541 - Browne).

DPL:rs

I. Plans for Future Development:

In October, 1973, Lee Goodwin, Commissioner of Housing and Community Renewal of the State of New York, began a series of meetings with officials of the Housing and Development Administration of the City of New York as to how best to use Federal funds available to the State in the §236 program. As Commissioner Goodwin testified:

> After reviewing a number of proposals with the City and considering a number of options to put this money in other parts of the State, we concluded that the most desirable use of funds from both the City's and State's standpoint would be the completion of the West Side Urban project which had been in planning and execution for more than a decade. (Tr. 3784)

The State and City are proceeding immediately with the development of Site 41 (between 88th and 89th, east side of Columbus Avenue) and Site 44 (between 87th and 88th, west side of Columbus Avenue). Thereafter, the State has agreed with the City to undertake the development of Site 32, 35, and 45/46 (constituting a single site), which are located in Stage III, and Site 9, located between 95th and 96th Streets, on the west side of Columbus. (Tr. 3789 - Goodwin). All of the proposed projects will be under the combination of the Mitchell-Lama and §236 programs, with 30% of the units for low-income families (Tr. 3792 - Goodwin).

DPL:rs

J. Strycker's Bay Neighborhood Council:

Strycker's Bay Neighborhood Council, Inc. has been actively involved in the community with the formulation and development of the Plan since its earliest years (Tr. 3528-29 - Browne; Ex. 10). After the approval of the Final Plan, Strycker's Bay was designated the Project Area Committee (Tr. 3527 - Browne). A Project Area Committee (PAC) is required by Federal regulations in all urban renewal projects which have plans for residential construction or rehabilitation. It is the policy of the Department of Housing and Urban Development "to assure that maximum opportunities are provided for citizen involvement in the planning development, and execution of programs assisted by the Department" and that citizens should have "clear and direct access to decision-making in all stages of the urban renewal process. . ." (See Urban Renewal Handbook, Department of Housing and Urban Developement, RHA 7217.1, Chapter 5, Section 2). The membership of Strycker's Bay is composed of many organizations in the community of the West Side Urban Renewal Area and its immediate periphery.

DPL:rs

The membership includes 10 churches, 18 day care centers and schools, two owner-resident associations, block associations, building associations, cooperative housing board representatives, political and social clubs. (Tr. 3445 - Farrelly). Positions on issues arising in connection with the Urban Renewal Plan are taken by votes at plenary meetings of the delegate organizations held usually on a monthly basis (Tr. 3447 - Farrelly). The major issue which has come before the Council, and engaged the time and effort of the staff, has been the problems of relocation (Tr. 3447 - Farrelly; Tr. 3551 - Browne). During the course of trial plaintiffs appeared to attempt to place CONTINUE on an equal status with Strycker's Bay as a representative organization within the community. Such is clearly not the situation, and as will be demonstrated subsequently, CONTINUE is the voice of but a handful of people, if that many, most of whom live on 88th Street.

A-541

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC., Plaintiffs,	:	
-and-	:	PLAINTIFFS' ANSWERING POST-TRIAL BRIEF
ROLAND N. KARLEN, ALVIN C. HUDGINS and CONTINUE, Plaintiffs-Intervenors,	:	
-against-	:	71 Civ. 4315 (I.B.C.)
GEORGE ROMNEY, Secretary of the Department of Housing and Urban Development, et al., Defendants,	:	
-and-	:	
STRYCKER'S BAY NEIGHBORHOOD COUNCIL, INC., Intervenor-Defendant.	:	

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs and
Plaintiffs-Intervenors
40 West 57th Street
New York, New York 10019
(212) 757-5050

Eugene J. Morris, Esq.
Martin Stuart Baker, Esq.
of Counsel

TABLE OF CONTENTS

	PAGE
STATEMENT	2
THE BASIC ISSUES	6
HISTORY AND CURRENT STATUS OF THE PLAN	8
The Relocatees	8
Public Housing Projects	9
The 70/30 Ratio	9
Squatters	10
NEPA DEFINES "ENVIRONMENT" BROADLY AND REQUIRES SPECIFIC STUDY OF MANY INDIVIDUAL ISSUES	11
A. HUD Was Required to Study Many Environmental Factors And Considerations, Including "Tipping", But Did Not Do So.	11
B. Failure To Consider Social Issues Renders The Threshold Determination Illegal.	14
C. Defendants Breached A High Obligation To Consider The Cumulative Harm Of The Decision To Fund Low Income Housing At Site 30.	17
D. There Was No Consideration Of Alternatives To The Project As Required By Law.	18
E. Nucleus Of Chicago Homeowners Association v. Lynn Distinguished	19

Table of Contents (continued)

	PAGE
THE INADEQUACIES OF THE HUD ENVIRONMENTAL ANALYSIS ARE NOT CORRECTED BY THE HUD PREPARED PROJECT SELECTION CRITERIA STUDY	21
A. The Project Selection Criteria Study Was Prepared Eight Months After The Completion Of The HUD Environmental Analysis	21
B. HUD's Analysis Is Distinguishable From Material Submitted to HUD	21
C. The Environmental Study And The Project Selection Criteria Study Were Conducted For Distinctly Different Purposes	23
D. The Project Selection Criteria Study Does Not Address Issues Required To Be Considered By HUD Under NEPA	25
THE SUBSTANTIVE MANDATE OF NEPA CANNOT BE MET IN THIS CASE	26
TIPPING POINT OF THE AREA	28
Otero v. New York City Housing Authority	28
Expert and Statistical Analysis	33
Deterioration Of The Area After 1970	46
The Brownstone Sales	54
AS TO DEFENDANTS' CLAIM THAT THERE HAS BEEN NO BREACH OF CONTRACT	56
Trinity's Reliance Upon the City's Representations	58

Table of Contents (continued)

	PAGE
The Brownstone Owner's Reliance Upon the City's Representations	61
The Merger Clause	61
Written Consent from Pilot Project Ar[illegible]	65
AS TO ATTORNEY'S FEES AND COSTS	69
1) Plaintiffs Are Entitled To An Award Of Costs Against The City And Strycker's Bay Even If They Do Not Prevail	72
2) The Common Benefit Exception Is Applicable Even Where No Pecuniary Recovery Is Possible	72
3) The Private Attorney General Exception Does Not Apply Only To Plaintiffs Who Have Acted Solely For The Benefit Of The Public	73
4) Under The Private Attorney General Exception Plaintiffs May Recover Attorney's Fees Against: (a) The United States Or Its Officers Or Agencies If Plaintiffs Prevail; (b) The City of New York; and (c) Strycker's Bay	74
(a) Recovery Against The United States Is Authorized By 42 U.S.C.A. §2000e-5(k)	75
(b) Recovery Against The City Is Permissible Under The Private Attorney General Exception	75

Table of Contents (continued)

PAGE

(c) It Is Consistent With The Private Attorney General Exception To Award Attorney's Fees Against Strycker's Bay 76

CONCLUSION 79

a chapter on the measurement of community attitudes); Karsada,

STATEMENT

This is a case about Government power over citizens who since 1970 have experienced that power as raw, direct, callous and violative of their legal rights. It is about power which created breaches of promises sincerely made by predecessors in office and relied on by citizens for enormous personal and financial commitments which they are now told are simply not important - meaningless. In essence, then, this case is about arrogance of Government action and whether it can be checked.

The joint Government brief has one overpowering message: Government can do what it wishes; disregard these citizens; disregard past promises, even by predecessors in high Government office. There is no word of caring, of humility, of concern over the current circumstances into which these citizens have been cast, or even of legality.

And as for the credibility of plaintiffs' witnesses - they are all liars, en masse, and thus to be discounted. Even the many experienced senior Government officials, past and present, who testified on plaintiffs' behalf are liars. All plaintiffs' witnesses are to be "taken care of" in one swipe:

disregard them and they are not to be believed on anything. Witness after witness is discussed in the most callous and arrogant terms. There is no room for interpretation or reasonable disagreement, plaintiffs are a bunch of liars, says their Government.

Plaintiffs have been saddened to see their Government file such a brief based on the tactical choice of "plaintiffs are mass liars" -- and to be so revealed. Plaintiffs look to this Court for fair utilization of their testimony and protection of their legal rights free of current political muscle and ideological turn. They look now to see if they can trust their Government. They look to the Court to remedy the blatantly illegal course of action of the Government.

The ultimate issue is the validity of a partnership arrangement to improve the Area. Regretably, the Government brief doesn't even discuss that issue, a silence which speaks volumes in this situation. It simply wants to be wholly free to act alone - as the immediate moment may move them, a bizarre political concept of the past several years and without basis in law.

The crucial issue in this case is whether the Area has been deteriorating since 1970 as a result of the cumulative effects of successive breaches of contract by the defendants

which place the Area in danger of tipping, ceasing to be integrated and becoming a segregated slum in a manner which would destroy the purposes of the Plan and waste the time and effort along with the hundreds of millions of dollars of public and private money invested in it.

For the Court to resolve so basic and important an issue requires that the facts as they exist in the Area be made available to the Court as extensively and as completely as can be done on a trial. For this purpose plaintiffs have set forth a detailed digest of the testimony of all of the witnesses who testified on the trial along with a digest of all of the Exhibits offered by plaintiffs. (Exhibits B and C annexed to Plaintiffs' Brief)

The true and complete facts demonstrate that the Area has been deteriorating since 1970 and is in danger of tipping unless the present downward trend is reversed. Plaintiffs' evidence overwhelmingly establishes this trend.

Defendants argue in their brief that the sole basis for plaintiffs' position is the conversion of Site 30 from middle to low income housing. This overlooks completely the true nature of plaintiffs' case which is predicated upon breaches that extend far beyond the conversion of Site 30.

As we have stated in our affirmative brief defendants have breached their contractual obligations under the Plan in the following respects:

1. Failure to complete the Plan within a reasonable time.

2. Allowing the squatters to come into the Area illegally and stay there with legitimatized status so that there are still 274 squatter families on the site.

3. Illegally converting Sites 4 and 30 from middle to low income housing.

4. Failing to effectuate a formal plan change on the conversion of Sites 4 and 30 and failure to obtain the written consent to the change from owners and lessees in the Pilot Project Area as contractually required.

5. Allowing over 3300 units of low income housing to be included in the Area and its environs in violation of the commitment for 2500 units.

6. Planning for the future development of a total of 4130 units of low income housing in violation of the commitment for 2500 units.

7. Violating the provision for a 70% middle income and 30% low income ratio in Leader House, Columbus Manor and Westwood House by allowing welfare families to come into the 70% middle

income portion and employing Section 236 subsidy where the income limits are approximately equal to current public housing limits.

8. Allowing a concentration of low income housing to occur on 91st Street (the Trinity block), which includes Site 30 as public housing, which will total 860 units of low income housing thus creating a "pocket ghetto" immediately around the Trinity school.

9. Failing to comply with Environmental and Civil Rights Laws.

The discussion in this answering brief will follow the order of defendants' brief and will refer to the pages in defendants' brief to which the arguments in this answering briefare addressed.

THE BASIC ISSUES
(Defendants' brief pp. 1-9)

The four basic legal issues as stated by plaintiffs on the trial were as follows:- (48)

"1. Whether there has been compliance with the National Environmental Protection Act by HUD in connection with its findings.

2. Whether there has been compliance with the provisions of the Otero case with respect to the Civil Rights Law aspects of the case, which relate to tipping point and elements of that sort. ....

3. Whether there has been a breach of contract between the contracting parties, the plaintiffs, and the City in the manner in which the City has performed under the terms of the contract.

4. Whether there has been a breach of the clause in the contract which was entered into by the intervenors which provided or which required that those in the pilot project area are required to consent to any changes in the Urban Renewal plan in writing."

All of the arguments of plaintiffs advanced in their post-trial brief fit within the confines of these basic four issues.

1. The National Environmental Protection Act argument is contained in POINT II, pp. 107-129 of plaintiffs' brief.

2. Compliance with the Civil Rights aspects of the Otero case as it relates to integration is discussed in POINT I, Item 10 at pp. 81-104.

3. The breaches of contract after the fourth revision of the Plan by the City are discussed in POINT I, pp. 34-106 and includes all respects in which the City breached the contract between it and plaintiffs.

4. The requirement for written consent of those in the Pilot Project Area is discussed in Items 7 and 8, pp. 59-72 of POINT I and involves the requirement for a formal plan change and the necessity for a consent in writing by those in the Pilot Project Area to the plan change.

HISTORY AND CURRENT STATUS OF THE PLAN
(Defendants' brief pp. 10-43)

The Relocatees

The primary purpose of the Plan was to accomplish the revitalization of the Area. Taking care of the relocatees was only an incidental part of it yet through their entire discussion of the History of the Plan defendants' discussion seems to imply that taking care of the relocatees was the primary purpose of the Plan and that every relocatee was promised an apartment in a new or rehabilitated building irrespective of how low a rent the relocatee could afford to pay and what the new or rehabilitated apartment would cost.

That is simply not the case. The relocatees were promised a priority in the new apartments and to relocation in decent, safe and sanitary accommodations. But there was never a promise that all relocatees were guaranteed a new or rehabilitated apartment in the Area. To do so would have

negated the entire concept of the Plan which was to renew the Area into a well balanced, soundly integrated community. The 2500 low income units were agreed upon as the optimum in order to keep the Area balanced and integrated (3677-3678) and based upon prior experience with relocation would be sufficient because only a small percentage of relocatees ever seek to come back into an urban renewal area.

Public Housing Projects

As to the mention at p. 25 of defendants' brief of the number of public housing units available for relocation it should be noted that although the first announcement of the 2500 units only included the public housing site at 93rd Street and Amsterdam Avenue (de Hostos) subsequent announcements included the 830 Amsterdam Avenue site of 15[illegible] units (Plaintiffs' Exhibits 2,3 and 4) and Starr and Fried testified that all three perimeter sites were included in the 2500 units agreed upon (251,357,426, 688-697, 913-915). Thus, the Record substantiates that the 2500 units included the three perimeter public housing projects and the public so understood it.

The 70/30 Ratio

At pp. 38-39 of defendants' brief the 70/30 ratio

is discussed. In this connection it should be noted that the ratio only applies to internal integration in the new buildings and does not refer to the entire Area. In the early days of the plan the ratio was as little as 10% or less for low income units, which was then raised to 20% and in 1968 increased to 30% as set forth in the Trinity contract (Plaintiffs' Exhibit 14 at p. 14, Defendants' Exhibit S).

Squatters

As to the squatters discussed at pp. 39-40 of defendants' brief it has been established by the letter from the Law Department of the City of New York dated May 28, 1974 to the Court at page 2 that there are 274 squatter families in the Area at the present time.

It should be noted too that Strycker's Bay only represents the viewpoint of the small number of people in the Area who have been proselytizing for a greater number of low income units. They have been mainly concerned with the relocatees and do not, in fact, represent the views of the majority of the owners and lessees in the Area who espouse a balanced integrated Area.

NEPA DEFINES "ENVIRONMENT" BROADLY AND REQUIRES SPECIFIC STUDY OF MANY INDIVIDUAL ISSUES (Defendants' Brief pp. 44-72)

A. HUD Was Required To Study Many Environmental Factors And Considerations, Including "Tipping", But Did Not Do So.

Defendants concede that the legal concept of "environment" is meant to be interpreted broadly to include physical, social, cultural and esthetic dimensions and that HUD requires this broad definition in its regulations (Defendant's Brief 56-57). HUD's definition of "environment" lists more than 20 specific examples of environmental considerations along these four dimensions, including:

Air quality
Water quality
Erosion control
Natural hazards
Land use planning
Site selection and design
Subdivision development
Consideration of flora and fauna
Urban congestion
Overcrowding
Displacement and relocation resulting from public or private action of natural disaster
Noise pollution
Urban blight
Code violations and building abandonment
Urban sprawl
Urban growth policy
Preservation of cultural resources
Urban design

A-556

The quality of the built environment
The impact of environment on people
and their activities

(HUD Handbook, 1390.1, Fed. Reg., July 18, 1973, p. 19182 ff, hereinafter "HUD Handbook"; see also Proposed HUD Regulations at 39 F.R. 6816, February 25, 1974. Note: While substantially similar with respect to this definition, the appendix to Defendant's Brief purporting to be HUD Regulations are unidentifiable by any date, authority or recognized citation.)

Courts have considered environment to include many other specific issues and factors also. For example, Hanly v. Mitchell, 460 F.2d 640 (2nd Cir., 1972)(hereinafter Hanly I), states: "The National Environmental Policy Act contains no exhaustive list of so-called 'Environmental Considerations', but without questions it aims beyond sewage and garbage and even beyond water and air pollution ... The Act must be construed to include protection of the quality of life of City residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban 'environment' and are surely results of the 'profound influences of ... high density urbanization [and] industrial expansion.'" (460 F.2d 640,

at 647). The Court there goes on to say that plaintiffs raise many environmental considerations that should not be ignored. The Court stated the essential point as being that the government "must actually consider the issues raised by Plaintiffs" and that "it is 'arbitrary or capricious' for the agency not to take into account all relevant factors in making its determination". (460 F.2d 640, at 648).

In short, the agency must consider those factors which are relevant or at issue surrounding a specific proposed decision.

The environmental factors at issue, and which NEPA requires be considered, are different surrounding each particular decision. See, eg., Save our Ten Acres v. Kreger, 472 F.2d 463 (5th Cir., 1973)(an office building in a city), Scenic Hudson Preservation Conference v. F.P.C., 453 F.2d 463 (2nd Cir., 1971)(power project on Hudson River), Environmental Defense Fund v. Corps of Engineers, 348 F. Supp. 916 (N.D. Miss., 1972)(animals, water quality, etc. in connection with Tennessee-Tombigbee Dam and Waterway project).

In this case, Plaintiffs have established a whole

range of environmental concerns implicit in the proposed decision relative to the Area (Plaintiffs' Brief 120-126). The failure to consider all of these issues -- tipping and neighborhood stability included -- render the threshold decision not to prepare an environmental impact statement arbitrary and capricious (Hanly I, 460 F.2d, at 648).

The relevant HUD official, John Maylott, who was at the time the director of the New York City Area Office of HUD, conceded that many environmental issues raised by Plaintiffs were not considered (3121-3123). Under the existing law in this Circuit, the threshold decision based on such an incomplete analysis is arbitrary and capricious (Hanly I, 460 F.2d, at 648).

B. Failure to Consider Social Issues Renders The Threshold Determination Illegal.

The threshold determination made by HUD that no Environmental Impact Statement was required in this case was made based on the arbitrary and illegal finding that social issues are not environmental issues within the context of NEPA. Based on this incorrect premise, HUD claimed it was not required to study the social issues and it did not study them. (1st page of Defendants' Exhibit E). This

statement in the threshold decision document, upon which the HUD Area Office relied, is directly contrary to the HUD regulations which state that environment includes social dimensions as well as physical, esthetic and cultural ones. (HUD Handbook, Par. 2(a)).

There are recognized methodologies for the consideration of sociological and psychological phenomenon. (Gans 3719-3727, Foden 2853-2855). As long as there are such methodologies available, whether or not variables contained within them are measurable in a quantification sense is irrelevant. There happen to be many recognized techniques for measuring sociological and psychological phenomenon. These are in addition to the surveying, sampling, discussion and analysis described as techniques by Foden (2853-2855). (See, for example, Social Network Analysis and Alienation Scales, two techniques described in Barter and Schogten, Qualities of Community Life, Jossey-Bass, San Francisco, 1973; Caplow, et al., The Urban Ambience, Bedminster Press, New Jersey, 1964; Bradburn, et al., Racial Integration in American Neighborhoods, Report of National Opinion Research Center, Report No. 111B, 1973 (containing

a chapter on the measurement of community attitudes); Karsada, D., and Janowitz, M., Community Attachment in Mass Society, American Psychiatric Review, June 1974; and several of the works of Gans, cited at Defendants' Exhibit AL.)

The quote relied on by defendants at page 48 from Hanly v. Kleindienst, stating that it is doubtful whether psychological and sociological effects need be considered, was misleading because the Court specifically stated immediately thereafter that was an issue which the Court did not need to decide. (471 F.2d 823, 1972, at 833 hereinafter Hanly II).

Even if certain factors are not measurable, they can be described and analyzed.

Section 102(2)(b) of NEPA specifically recognizes the need to consider environmental issues which cannot be quantified. This section places an affirmative duty on each agency of the federal government to develop methods and procedures for the consideration of such "unquantifiable" environmental effects. (42 U.S.C. 4332(2)(b)) The government certainly cannot argue that its own failure to comply with Section 102(2)(b) of the Act provides the legal ground for non-consideration of these issues pursuant to the requirements of Section 102(2)(c) of the Act, the Environmental Impact Statement requirement.

C. Defendants Breached A High Obligation To Consider The Cumulative Harm Of The Decision To Fund Low Income Housing At Site 30.

An essential ingredient in the test of significance upon which the decision to prepare an Environmental Impact Statement rests is the effect of the proposed action in the context of other governmental actions. The cumulative effect of many decisions may be collectively significant. Several decisions made by the government since 1970, relative to the West Side Urban Renewal Area, have had enormous cumulative significance. These decisions include allowing the plan to be delayed, allowing squatters to occupy buildings, tenanting large apartments preferentially, changes in the Housing Authority's screening procedures, and the allowance of environmental degradation. This series constitute a continuum of decisions which provide the context in which the decisions to redesignate Sites 30 and 4 and to fund public housing at Site 30 were made. The government has ignored the pleas of community residents and plaintiffs prior to the instant federal decision making and has ignored the cumulative issues in their so-called environmental analysis. The cumulative harm that results from such a series of decisions

is particularly important as the Second Circuit stated:

> "It must be recognized that even a slight increase in adverse conditions that form an existing environonmental milieu may sometimes threaten harm that is significant. One more factory polluting air and water in an area zoned for industrial use may represent the straw that breaks the back of the environmental camel. Hence the absolute, as well as the comparative, effects of a major federal action must be considered." (Hanly v. Kleindienst, 471 F.2d 823, at 831; hereinafter Hanly II).

The decisions involving Site 30 herein at issue represent such a breaking of the environmental camel's back. The government's failure to consider the cumulative effect of this decision renders the environmental analysis legally deficient. (see discussion at Plaintiffs' Brief pp. 113-116)

D. There Was No Consideration Of Alternatives To The Project As Required By Law.

Assuming, arguendo, that Plaintiffs have a high burden of proving that the NEPA study conducted by HUD in the instant case was erroneous, this burden is established by HUD's total failure to consider many environmental issues and to consider any alternatives to the Project. This failure was admitted by John Maylott, the responsible HUD official, when he testified that alternatives to the Project were not considered (3124). Not only is this failure to

consider alternatives a direct contravention of NEPA Section 102(2)(c)(iii) which required that the environmental analysis be made on "alternatives to the proposed action", but it is also a direct violation of the provisions of Section 102(2)(d) requiring the agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources". Failure to consider alternatives is a direct violation of the regulatory mandates of the Council on Environmental Quality and of HUD's own regulations (see discussion at Plaintiffs' Brief, pp. 127-129).

E. Nucleus Of Chicago Homeowners Association v. Lynn Distinguished.

It is scandalous to liken plaintiffs' position in this case with the position taken by plaintiffs in Nucleus of Chicago Homeowners Association v. Lynn, 372 F.Supp.147(D.C. Ill., 1974), 6 ERC 1094 (N.D., Ill., 1973). In Nucleus, plaintiffs contended that low income residents were, per se, environmental issues. The Court rightfully held that human beings are not themselves pollution. The Court does, however, recognize

that human beings may be polluters. The Court there stated that "the relevant consideration is whether acts or actions resulting from the social and economic characteristics will affect the environment" at 372 F.Supp. 147 at 149. It is just such social and economic characteristics which are at issue in this case.

Plaintiffs very existence in the Area is testimony to their desire to live in an integrated neighborhood. The record is replete with references to this desire. Many of the witnesses have testified, as described in great length in plaintiffs' brief, that they actively seek the diversity and value of West Side Urban Renewal Area because it is an economically and racially integrated area. This suit seeks to retain the very integration which plaintiffs in Nucleus sought to avoid. The sole evidence presented in Nucleus was presented by expert witnesses for the plaintiffs and for the defendants testifying as to the different social propensities of middle income people versus low income people. This is distinctly not the issue in this case which seeks to maintain the integrated nature of the Area. Numerous witnesses testified to the effects of changing the social and economic mix in the Area contrary to the Plan.

THE INADEQUACIES OF THE HUD ENVIRONMENTAL ANALYSIS ARE NOT CORRECTED BY THE HUD PREPARED PROJECT SELECTION CRITERIA STUDY.

A. The Project Selection Criteria Study Was Prepared Eight Months After The Completion Of The HUD Environmental Analysis.

The Project Selection Criteria Study set forth as the first document in Defendants' Exhibit B was completed on December 11, 1972. The Special Environmental Clearance which represents HUD's attempt at compliance with NEPA, was completed on April 18, 1972. The threshold determination not to prepare an Environmental Impact Statement was incorporated in the memorandum from Maylott to Green, dated May 4, 1972 (1st Page, Defendants' Exhibit E). It is, therefore, impossible that the analysis set forth in the Site Selection Criteria Study could, in any way, substitute for or supplement the inadequate environmental analysis conducted eight months earlier pursuant to NEPA.

B. HUD's Analysis Is Distinguishable From Material Submitted to HUD.

Only the first two documents of Defendants' Exhibit E were prepared by HUD in response to the requirements of NEPA. The rest of the documentation incorporated

in this exhibit involves a plethora of disparate items. These items include documents prepared by the New York City Housing Authority, newspaper clippings, portions of New York City Zoning Ordinances and correspondence. There is no evidence that HUD, in doing its required analysis of the environmental issues considered anything other than the application of the New York City Housing Authority. Nothing is incorporated into the HUD analysis specifically by reference. Similarly, there is no evidence that any of the information contained in these attached disparate documents systematically found its way into the analytical procedures used by HUD. There is no evidence establishing this reliance.

The same relationship, unfortunately, applies with respect to the HUD analysis conducted pursuant to the project selection criteria regulations. There is no reference in the project selection criteria analysis to any of the desparate documents attached to defendant's Exhibit B.

Just because a number of items are stapled together to form one particular exhibit for purposes at trial, there are no grounds to establish that these documents were either a part or the whole of the record before the agency

at the time the decisions were made or, even if they were, that they were relied on by the agency and incorporated into its analysis.

The confusion resulting from the stapling together of the documents that form defendants' Exhibit E was sought to be alleviated by plaintiffs at trial at the time these exhibits were introduced. It if for this reason, for example, that defendants' Exhibit E-1 was marked for identification. To group these documents together and characterize them collectively as either the environmental analysis or the project selection criteria study is a distortion of the facts.

C. The Environmental Study And The Project Selection Criteria Study Were Conducted For Distinctly Different Purposes.

The environmental study was conducted, albeit erroneously, pursuant to the NEPA. The project selection criteria study was prepared pursuant to the Civil Rights Act of 1964 and 1968 (42 U.S.C. 2000(D)(1) and 42 U.S.C. 3608). They are two independent documents prepared in response to two independent legal requirements. The portion of defendants' Exhibit B prepared by HUD was prepared in accord with regulation

whose purpose is

> "[T]o set forth the project selection criteria to be used in evaluating (a) requests for priority registration and reservation of contract authority for projects under Section 235(i) of the National Housing Act; (b) requests for early feasibility and reservation of contract authority for projects under Section 236 of the Act; (c) requests for reservation of contract authority for rent supplement projects; and (d) applications for low rent housing assistance under the U. S. Housing Act of 1937. (24 CFR § 200.700).

The HUD Handbook which sets forth the environmental regulations for HUD states that its purposes are "to set forth environmental policy, to assign responsibilities, and to provide procedural guidance to all headquarters and field officers for environmental clearances under NEPA". (HUD Handbook at Paragraph 1.)

There is nothing in the project selection criteria study prepared by HUD making any reference to the Special Environmental Clearance or to any other environmental studies which may have been conducted by HUD on any issue in the Area. Conversely, there is no reference in any of the environmental documentation prepared by HUD of the project selection criteria study. One obvious answer is as set forth in the prior section, to wit, the environmental work and decision preceded by at least eight months the project selection criteria study. Another obvious answer would be that there was, in fact, no interrelationship

between the two studies. Under either situation, no credence can be given to the arguments made by defendants that the inadequacy of the environmental study are somehow corrected or excused by the project selection criteria study.

D. The Project Selection Criteria Study Does Not Address Issues Required To Be Considered By HUD Under NEPA.

No consideration of alternatives is set forth in the project selection criteria study prepared by HUD and set forth as the first part of defendants' Exhibit B.

This deficiency was not explained by, or even addressed by any of defendants' witnesses at trial. Thus, the project selection criteria study cannot be relied on to "repair" the deficiencies of the environmental study.

Neither tipping nor the cumulative effects of the decision to fund low income housing at Site 30 are addressed in the project selection criteria study. Defendants claim that the tipping phenomenon is adequately addressed in the project selection criteria study. However, nowhere in this study is tipping addressed, is neighborhood or tenant stability addressed, or are community attitudes and fears addressed. These are essential elements of the tipping phenomenon as set forth in the definitions

of tipping utilized by either plaintiffs or defendants during this trial. (See Starr 234-235, 263, 329-348, Kristof 2509, 2522-2531, Gans 3695-3697).

Urban blight, urban design, noise, the quality of the built environment and the many other environmental issues which were not considered by HUD in the Special Environmental Clearance are nowhere addressed in the Project Selection Criteria Study, or in any of the accompanying documentation.

Therefore, it cannot be argued that the project selection criteria study makes up for the government's omissions in the deficient environmental analysis.

THE SUBSTANTIVE MANDATE OF NEPA CANNOT BE MET IN THIS CASE.

Section 101 of NEPA (42 U.S.C. 4332) declares the National Environmental Policy. Congress declared the policy recognizing "the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man." (42 U.S.C. 4331(a)). Based on this policy, there is an affirmative, substantive duty placed on the government to protect and enhance environmental quality through its decisions. See Environmental Defense Fund v. Corps. of Engineers, F.2d , 6 E.P.C. 1513 (5th

Cir., April 19, 1974); Conservation Council v. Froehlke, 473 F.2d 644 (4th Cir., 1973); Environmental Defense Council v. Corps. of Engineers, 470 F.2d 289 (8th Cir., 1972); Calvert Cliffs Coordinating Committee v. AEC, 449 F.2d 1109 (D.C. Cir., 1971); See also Scenic Hudson Preservation Conf. v. F.P.C., 453 F.2d 463 (2nd Cir., 1971).

In this case, there is no way the government can build low income housing at Site 30 and allow conditions to remain the same in the Area without inherently violating the law. Only by returning the Area to development in accordance with the Plan, as it was properly amended, can environmental quality be enhanced in the Area. Thus, no adequate environmental impact statement can be prepared which would justify the government action taken herein.

It is because of this need to positively eliminate the threat to the environmental quality of the Area -- the Plan's high goal of a stable, integrated urban neighborhood -- that plaintiffs request the relief sought in this action.

TIPPING POINT OF THE AREA
(Defendants; brief pp. 79-176)

Defendants; POINT II proceeds upon two erroneous assumptions:

1. That plaintiffs' action is predicated upon the proposition that the construction of Site 30 as low income housing alone will cause the neighborhood to tip and

2. That the only basis for plaintiffs' claim is that the neighborhood will tip. Both of these positions fail to give consideration to the many other points in plaintiffs' argument as outlined in the 11 subdivisions of POINT I of Plaintiffs' Post-Trial Brief (pp. 34-106A and as outlined at pp. 5 and 6 of this brief. In short, defendants have attempted to eliminate crucial issues from the case by narrowing their definition of the basis for plaintiffs' claim.

Otero V. New York City Housing Authority, 484 F.2d 1122(2d.Cir.1973)

The attempt to distinguish Otero (defendants' brief pp. 79-85)from this case on the ground that the decision in Otero was predicated exclusively on racial grounds whereas this case involves economic factors, is unsound.

Otero involved an urban renewal plan where objection was made to allowing low income relocatees to come into the project on an unselected basis, since that would lead to the tipping point being exceeded and the area becoming segregated in violation of the Civil Rights Law. In this case objection to the massive infusion of low income families in order to give preferences to relocatees on an unselected basis (as is sought to be accomplished by defendants) is objected to on the same grounds as Otero -- that it will end up creating a segregated area in violation of the contractual obligations of the City and of the Civil Rights laws.

In both cases it is the indiscriminate admission of relocatee low income families which leads to the inevitable result of exceeding the tipping point and thus violating the Civil Rights Law.

The force of the analogy is not impaired by the fact that in our case the taking in of low income relocatee families in excessive numbers also consitutes a breach of contract whereas in Otero the opposite is true--there was a prior obligation to take in these relocatees. The Court of Appeals held that right must yield to the paramount requirement of the Civil Rights Law to avoid segregation.

Both cases involve challenges to the admission of excessive numbers of low income relocatees which will in and of itself create segregation. That is the evil the Second Circuit sought to avoid there and plaintiffs seek to avoid here.

Based on defendants concession that "black and Puerto Ricans are often associated with persons of low income" (defendants' brief pp. 79,81) the admission of excessive numbers of low income families equates with non-white minorities and in that sense the issue herein relates to race.

In any event the attempt to distinguish Otero and this case on that ground is without substance. The cases are on all fours except that, because of the breach of contract element not present in Otero, our case is even stronger and compels the same finding as Otero--namely that to allow excessive numbers of low income families to come into the Area cannot be countenanced since it will violate the provisions of the Civil Rights Law.

The argument made in defendants' brief that it is difficult to define low income families does not change the fact that low income rather than black and Puerto-Rican

families are equated with the creation of a ghetto and various anti social styles of living endemic to a ghetto. There are many middle income blacks and Puerto Ricans one would not associate with a ghetto (viz. the witnesses Hudgins (1169-1285), Owen (2553-2613) and Justiano (3734-3753), Sifonte (1666-1673, 2257-2295), Garcia (1642-1663, 1673-1680).)

Thus, the true element to be considered in evaluating tipping is the low income category of the families involved and the racial element is a concomitant of it -- not a distinguishing element. Thus Dr. Kristof testified that tipping involves racial and economic changes. In our society today low income families are predominantly Puerto Rican and black. The tipping concept is in reality more economic than racial. The economic and racial distinctions are correlative -- they are not causative (2526-2530)

Defendants (at p. 84) are correct in stating that the trend toward concentration must be evaluated in determining what may cause ghettoization. Where we have a concentration of low income housing as on 91st. Street (the Trinity block) of 860 units (which is more than was planned for all of Forest Hills) out of a total of around 1000 units in the new buildings (or more than 80% low income) that

truly constitutes "concentration." This is exacerbated by the proximity to Leader House, Columbus Manor and Westwood House (which are only one block away) with their concentration of low income units (Defendants' Exhibit S). This is indeed the type of concentration which leads to the pocket ghetto discussed in Otero. (See pp. 89-90 Plaintiffs' Post-Trial Brief), The 91st. Street block already is a pocket ghetto.

Expert and Statistical Analysis

Analysis of the census figures adduced by Dr. Frank Kristof and discussed at pages 85 to 90 of defendants' brief in fact support plaintiffs' contentions, rather than counteract plaintiffs' argument as to tipping.

The defendants overlook the fact that plaintiffs agree that there was no sign of tipping in the Area between the 1960 and the 1970 census. Indeed a bulwark of our argument is that the Area was distinctly on the upgrade during those years and there was no sign of tipping. That was why Trinity was willing to commit itself finally in 1968 to stay in the Area and expend or obligate itself for in excess of $9,000,000. Deterioration only occurred beginning in 1970 with the advent of the squatters and the change in attitude towards the Plan by the City, as a result of pressure by politicians and other extreme groups which resulted in the breaches of contract by the City that gave rise to this action.

Thus, the pages of statistics and analysis of Dr. Kristof's testimony contained in defendants' brief serve to point up the correctness of plaintiffs' position.

They certainly do not support defendant's position.

Kristof's testimony on which defendants place so much reliance was that the Area would tip with the large influx of low income families presently there and planned for the future by the City (2513-2531). In addition, he was personally opposed to the City's policy changes starting in 1970.

His testimony that the West Side community from 59th Street to 110th Street is strong and stable merely means that it is basically a soundly integrated community, which is exactly what the Plan was formulated to preserve and what attracted the host of people who came into or stayed in the Area. People and institutions made substantial investments of money because they sought stable, integrated neighborhoods. Kristoff is saying, however, that even despite its strength the Area will tip if it is overloaded as at present and as is being planned by the City in the future. We argue that the massive infusion of low income families in breach of the City's contractual obligations is causing tipping. This is Kristof's opinion; (see also Starr 263, 26[illegible] 301-303).

Neither Kristof nor anyone else was able to give

statistics adverse to the plaintiffs' point of view dealing with the situation between 1970 and 1974 in the Area when we do claim the danger of tipping is in issue. All proof on this time period comes from witnesses' direct observations.

Thus, when plaintiffs' claim is correctly represented and the testimony properly analyzed, plaintiffs have proven their case and are entitled to judgment.

Again at p. 91 of defendants' brief plaintiffs' position is distorted by being characterized as involving the construction of Site 30 as public housing as the sole cause for tipping. Constant repetition of this misrepresentation will not help defendants to make it true.

Yet it was the basis for Dr. Gans concluding that the Area would not tip. He testified as quoted at p. 97 of defendants' brief that the 160 units on Site 30 would not cause the Area to tip. Moreover he testified that the number of housing units per se does not mean anything--instead it is the people's perception of newcomers which would affect tipping (3704-3705). Plaintiffs agree with Gans on this latter position.

The Record is replete with testimony demonstrating

the perception of those in the Area of its deterioration. That is what will cause tipping as best evidenced by the testimony of Liebert (1832, 1852-1859, 1928) and Gratz (3016, 3022-3027) who have actually fled the Area and the threat to do so, unless relief from the situation is granted in this action, by Sours (2358-2359), Owens (2559-2561) and Friedberg (2445-2446). The situation is immediate, real and threatening in Gans' own terms.

In analyzing Roger Starr's testimony at pp. 97-105 defendants' brief tries to draw the same specious distinction between economic changes and racial changes as was attempted in trying to distinguish our case from Otero.

Starr in fact testified that when we talk of tipping point it is not solely a question of economic balance or racial balance, it is both. He stated that in the Area, where there are a fairly considerable number of non-white homeowners, if the neighborhood tips they will get out along with the white people. It will be a case of middle income people of all types getting out, and it is the infusion of low income families that will cause that "tipping" result (263, 264, 301, 368).

These concepts of tipping are as we have established in Plaintiffs' Post-Trial Brief at pp. 81-105 that "The increase in number of low income tenants is synonymous with an increase in the number of non-white tenants." Thus it is clear that defendants are in error when they attempt to draw a distinction between "racial" factors and "economic" factors as they affect tipping and since they predicate their entire reliance upon this so called distinction their defense must fall and plaintiffs' overwhelming evidence of tipping must prevail.

At pp. 100-105 of defendants' brief an attempt is made to negate Starr's persuasive position by pointing out that he admitted that the Area has adequate supporting community services. Neither Starr nor any of our other witnesses ever questioned the adequacy of the community services of this fine Area. Indeed it is precisely to preserve these outstanding facilities--so hard won--that this action was brought by plaintiffs since it is becoming apparent that they will be destroyed if the Area is allowed to sink into decline and eventually becomes a segregated slum as there is every present indication it will do.

Starr's point is that if you overload even an Area like this with low income families it will tip despite its strength.

As to the recent change in screening procedures which Starr testified allowed multi-problem and welfare families to get into public housing it should be noted that defendants' witness Christian, Chairman of the NYC Housing Authority, conceded that changes in screening of public housing tenants had occurred recently. He stated that the screening of applicants has been hampered by recent court decisions; that the Authority no longer has access to court, probation, welfare or Board of Education records and must rely entirely on the interview (3811). He also testified that the old 21 point procedure, which has been eliminated, screened out undesirables. As a result of this inability to screen tenants the difficulty of management of Housing Authority projects has increased (3814-3815). He also testified that he is sure a certain number of less desirable tenants do slip through regardless of screening (3822). This accords with the testimony of Fried who is also a member of the Housing Authority (779-786).

It is clear from an analysis of the record that

Starr's testimony is persuasive on the question of tipping. He knows the Area--having followed the Plan from its inception up to the time of his testimony; and now as Administrator of the New York City Housing and Development Administration he has full jurisdiction of its processing and holds the same overall position in housing previously held by Mollen and Nathan. The extensive cross-examination to which he was subjected merely served to fortify the strength of his basic position.

Indeed, Starr's testimony is most persuasive and deserves to be relied upon by the Court in holding for plaintiffs.

As to defendants' analysis of Gaynor's testimony at pp. 105-108 of defendants' brief no mention is made of the fact that he was the supervisor of the Plan for the State of New York in its development and execution from its earliest inception until he left in 1969 and is Lee Goodwin's predecessor. Defendants' brief, in order to disparage his testimony, points to his lack of knowledge of minute details about the Area. He cannot be expected to know about these but that in no way impairs the value of his testimony as to

the basic concept of whether the Area will tip or not.

He testified that based upon his recent inspections and his knowledge of the Area there is a profound change and a definite thrust towards occupancy by low income families and if that is not changed the Area will become a slum or a ghetto (2750-2752).

As to the figure of 4750 low income units employed in his early report Gaynor testified that was merely a projection based upon the employment of Section 236 subsidy on the remaining sites to be built which would result in that number of low income units if Section 236 was used as it indeed was later used in Leader House, Columbus Manor and Westwood House. If the Section 236 funding (or the possible substitution of Section 23 funding as now contemplated by HUD) is used as it was on those three projects the estimate of 4750 units is regrettably conservative--in all probability there would be a much higher figure.

Moreover, the 80% figure of low income families in the three projects is also probably too low in view of the fact that Section 236 income limits are approximately the same as current public housing income limits which would mean the

figure should be closer to 100% than 80%. Thus this figure of 80% is not only not "kited" but, in fact, is understated.

The testimony of Sulzberger is criticized at pp. 109-110 of defendants' brief largely on the ground that he has not read any scholarly treatises on tipping. This misconceives the nature of Sulzberger's testimony. He was not called as a scholar or a theoretician but as a practical real estate man with over 40 years of experience in the field as owner and manager of a large number of properties not only in the Area but in the entire West Side and the City. (1682-1687) He testified from his personal experience and observations in the arena not on theory as, for example, defendants' witness Gans.

Sulzberger testified that beginning in 1970 the Area is starting to slide back and will continue to do so until it becomes the same ghettoized strip that it was both east and west of Columbus Avenue (1699-1710).

He obviously knows about tipping from direct personal experience with many similar neighborhoods in the City where he has been involved as manager and owner. For defendants to seek to dismiss his testimony solely on the ground that he

has not read articles written by others is on the face of it unwarranted.

Sulzberger's testimony is entitled to great weight as a sound practical estimate of the situation based on wide experience with similar situations throughout the City by one of the outstanding real estate experts on management and ownership of property in the City.

In commenting on Fried's testimony at pp. 110-115 of defendants' brief nothing is said about his having had more to do with the Plan and the Area than any other government official. He started as the Federal Regional Administrator in the middle and late 1950s who financed all the preliminary studies made in the Area. Then in the entire decade of the 1960s up to the present time he has been in the City Administration successively as Vice Chairman of the Housing and Redevelopment Board and the Housing Authority and as a Commissioner of the Housing and Development Administration. In short, during his public career he had supervision over some aspect of the Plan over a 19 year period (from 1955) and was required to keep informed as to its progress on a day to day basis. He was therefore more qualified than any other witness

to testify as to its past history, its current status and its future prospects. Aside from this he has been a resident of the West Side of Manhattan for most of his adult life and presently lives at 79th Street and West End Avenue. (458-467, 565, 566)

These impressive qualifications are reflected in the quality of his testimony and particularly in his response to a long and arduous cross-examination.

He testified there was a condition of urban blight in the Area before the Plan in 1962 which was changed in the period from 1962-1970. There was a reversal of the deteriorating trend. In 1970 from the time when the squatters came into the Area the improvement was halted. Within the last year the Area is on the downgrade with a return to urban blight so that unless the process is reversed the community will tip and you will end up with a ghettoized Area (600-612).

The nitpicking analysis of Fried's testimony set forth in defendants' brief pp. 110-115 does not in any way impair its credibility which accords fully with that of Starr, Kristof, Gaynor, Sulzberger and Bromberg and should

be relied upon by the Court in holding for plaintiffs.

The witness Bromberg also testified as to tipping point. He is employed by Sulzberger-Rolfe, has managed properties on the West Side for approximately 17 years and has lived there all his life. He manages all the Sulzberger properties in the Area. (1376-1377)

Bromberg testified that the conditions described by him in the Area will affect the rental of apartments in the future because people who can afford the rentals will move or go elsewhere to look. The area is tipping which means that a majority of the middle income people coming into the Area are now going in the opposite direction. More have-nots are taking the place of the haves and it is tipping to the havenots. From his experience in real estate when that happens it will lead to a ghetto (1461-1463).

We have discussed the testimony of the defendants' witnesses on tipping in Plaintiffs' Brief at pp. 99-103 and the analysis will not be repeated here except to reiterate that all of these witnesses (Maylott, Green, Christian, Hazen, Olinger and Goodwin) were the very officials who made the decisions which are challenged in this action and all they

did was to testify that they were right in having so decided. They added nothing to the record they had already made.

Deterioration Of The Area After 1970

Defendants failed to adduce any testimony to controvert plaintiffs' overwhelming proof as to the shocking conditions existing in Leader House, Columbus Manor and Westwood House except for the witness Justinano (3734-3753), a tenant in Leader House, discussed at pp. 125-129 of defendants' brief. He testified that conditions in Leaders House were good. However, when his testimony is contrasted with that of Sifonte, Garcia, Bromberg, Olnek and Roth we get an interesting insight into the basic difference between plaintiffs' and defendants' cases.

Although both Justinano and Sifonte were born in Puerto Rico (1670-3737) and both are hard working responsible citizens of about the same age their testimony as to conditions in the same building during the same period of time is sharply divergent. Sifonte testified that conditions in the building were so bad that he moved out of the building and gave up his job a few months ago. He moved out of the building because of drugs and his children were afraid. (1670) His detailed recital of incident after incident describes a building experiencing the worst slum conditions (1671,2257-2287)

This testimony is in contrast to that of Justinano who testified that conditions in the building from his point of view were good. However, he did testify that there was suspicion regarding narcotics activity and a police raid. (3747-3749) He also heard of one mugging, was himself the victim of a burglary (3749) and there was a problem of security in the building (3751).

In evaluating which of these versions is entitled to credibility we are assisted by the testimony of other witnesses testifying about the same or similar buildings.

For example the testimony of Garcia (1642-1663, 1673-1680) as superintendent of Columbus Manor, a similar building during the same time period, confirms fully Sifonte's testimony and belies that of Justinano.

To the same effect is the testimony of Bromberg who testified that Columbus Manor and Westwood House are a difficult management job and are subject to the same conditions Sigonte described (1440-1456). He is in immediate day to day charge of managing these buildings for their owners.

Olnek who managed Leader House testified to the same conditions. (2058-2066, 2099-2101, 2114, 2120).

See also testimony of Abe Roth who was in immediate charge of Leader House for Olnek. (2242-2253).

Against the overwhelming weight of this evidence of deplorable conditions in these 3 buildings by the 24 hour a day 7 days a week superintendents and the managing agents who are directly responsible for their operation, we have the views of one upwarly mobile person, Justinano who, although he admits there are problems in the building, feels he is fortunate to live on the 30th. floor of a new building.

The foregoing analysis highlights the essential difference between plaintiffs and defendants' cases.

Defendants are dealing with stubborn facts which simply will not go away and which when disclosed reveal the true situation that exists in the Area. That situation exposes starkly the deplorable conditions that exist as a result of the violations of the contract by defendants.

Much as defendats try to paper over the uglyness that exists they cannot do so. Thus, they are left with no alternative but to grasp at straws and attempt by distortion, misrepresentation and innuedo to obscure the true facts.

In connection with the discussion of the testimony of miscellaneous defense witnessses at pp. 129-139 of defendants' brief we have analyzed that testimony in our brief at pp. 76-80 and it will not be repeated here.

In that connection, however, the testimony of plaintiffs' witnesses describing the same Area at the same time should be contrasted with those of defendants. The testimony of plaintiffs' witnesses is found in capsuled form in Exhibit B annexed to plaintiffs' brief as follows:-Karlen pp. 1 and 2; Dr. Fine 2-5, Hudgins 16 and 17, Bromberg 18-21, Garcia 21, 22, Sifonte 23, 24 Liebert 26-31 Olnek 32-33, Roth 38, Sours 39-41, Friedberg 42-44, Owens 49,50, Gratz 57-61.

An analysis of the testimony of these witnesses establishes conclusively that the Area is truly deteriorating and requires remedial action by the Court.

As to the public schools in the Area discussed at pp. 140-147 of defendants' brief it should be noted that Morrison testified that the school population of P.S. 84 is almost 70% black and Hispanic (3388) and Mrs. Schwartz testified that the population of Joan of Arc is 90% black and Puerto Rican (3442) while Mrs. Hess testified that Joan of Arc is 99% black and Hispanic and 98% poor (3580).

In view of these figures it strains credulity to hear testimony that the schools are "highly positive", outstanding in their educational policy", have a "virtual absence of deportment problems and vandalism", "requests ....to place student teachers....because the schools are good", "the teaching staff is very good and the education is excellent" and "disciplinary problems are minor".

The testimony of Wohl analyzed at pp. 148,149 of defendant's brief also strains credulity as to the lack of problems in his community center as contrasted with the experience in other community centers where there are serious problems i.e., the problems of the University Settlement referred to by the Court (3221).

In the discusion as to Continue and the testimony of Fine on pp. 150-161 of defendants' brief the Continue organization is deprecated as the creature of a small clique and not truly representative of the Area. It is respectfully submitted that Continue actually represents and is supported by a majority of the residents of the Area as contrasted with Strycker's Bay which represents only a small group concerned largely with low income families and relocatees.

This does not mean that Continue is opposed to

low income families and granting relocation priorities to relocatees as intimated by defendants. Quite the contrary, they have always expoused the cause of relocatees and low inocme families and still do - but, within the limits of the agreement under which they made their commitment to the Area so that it will remain integrated (which was why they moved there) and not disintegrate into a segregated ghetto.

Underlying the remarks about Continue and Dr. Fine in defendants' brief is the bitterness and polarity of views between them and Strycker's Bay. We are surprised that Government attorneys signed a brief so characterizing citizens seeking lawful redress of their grievences.

But for the purpose of resolving the issues in this case that antagonism is irrelevant. Consequently, despite the distortions, misstatements, half truths and innuendos in defendants' characterization of Continue we will not burden the Court with an accusation, counteraccusation argument and will instead ask the Court to disregard defendants' distortions as irrelevant and immaterial to the true issues in this case.

The analysis of Dr. Fine's testimony at pp. 155-161 of defendants' brief seizes upon minute and insignificant detail in an effort to discredit it. It disregards the fact

that he is a citizen of the highest integrity with a high standing in his profession as a Ph. D. Psychologist. It likewise disregards the important impact of his testimony of what is happening to the Area in which he and his family have made so heavy an investment, which is being impaired by the defendants. (See summary of Dr. Fine's testimony Exhibit B annexed to plaintiffs' brief pp. 2-5).

The discussion of the testimony of Roberta Gratz at pages 161-163 represents a specious attempt to discredit her statement that when she sold her brownstone she lost money on the sale. She testified that the house cost her $190,000 and was sold for $150,000 and no proof to the contrary has been adduced. The innuendos in defendants' analysis to the contrary notwithstanding, her testimony taken in its entirety was worthy of belief. (See digest of her testimony in Exhibit B pp. 57-61 annexed to plaintiffs' brief)

Similarly with the testimony of Karlen in defendants' brief at pp. 163-167, Hudgins pp. 167-171, Sours pp. 171-172, we find analyses which deal in the same type of hair-splitting and innuendo. It should be noted parenthetically that no mention is made of the testimony of Liebert, Friedberg and Owens.

In contrasting the testimony of these two sets of witnesses we find the same situation we encountered in the testimony of Justinano. Defendants are leaving no stone unturned in their effort to obscure the true facts. But as we have stated these facts are stubborn and they will not go away irrespective of how the testimony of plaintiffs' witnesses is characterized.

The facts(that will not go away) are that these brownstone owners and tenants were induced to come into the Area on the representation that it was being renewed into a cohesive integrated community. Relying on what they saw and heard they made major commitments (probably the most important ones of their lives) to stay or come into the Area and invest substantial sums of money (in many cases their life's savings).

Then recently they saw a gradual erosion of everything they had counted on. Instead of the Area continuing to improve as they hoped it would, they saw deterioration and decay spreading around them. Progress with the Plan ground to a halt; squatters came in and settled in old slum buildings as their new neighbors; welfare and low income families abounded and they saw their hopes dashed as the entire neighborhood started to "go down the drain". Meanwhile defendants

continually backed away from conditions in the Area.

Faced with that sitation they banded together, formed Continue and worked to reverse the trend they saw developing while there was still time to prevent a tragedy which, if allowed to occur, would have no solution. When these tactics failed to stem the tide of violations of the Plan by defendants they instituted this action and came to this Court for the relief they were denied by the politicians and radical groups opposing them.

There is still time to rectify the errors and save the Plan but not much, as demonstrated by the flight from the neighborhood of Gratz and Liebert.

The Brownstone Sales

As to the testimony of Haldenstein at pp. 172-176 of defendants' brief it is argued that there were few sales and therefore there was no panic selling in the Area. The ultimate point is that there are few buyers - and there can be no sale without a buyer.

The fact is that there was a decrease in the sale of brownstones because there was little interest on the part of white middle class families to invest in the Area. This is the first stage in the tipping process - no new investors

willing to come into the Area. The next stage is for sellers to become so fed up with the Area that they are willing to sell at a loss in an era of sharp inflation - viz. Gratz. In the normal course of events unless there is a marked change in the development of the Plan the next step is panic selling - a point we have not yet reached but which is coming onimously close and which we are looking to this Court to help us to avoid.

Four sales are set forth in defendants' brief to show that there has been "a rather impressive and substantial increase in sales in the years 1970 and 1971."

These sales show sharp increases in price which bespeak extensive renovation or rehabilitation and no conclusion can be drawn from them that they were resold at a profit. In all probability they were probably sold at little or no profit or even at a loss to the seller as in the case of Gratz.

Moreover, even if they were sold at a minimal profit that can be accounted for by inflation during the period from 1965 to 1971 and does not evidence an increase in values as defendants would have us believe.

AS TO DEFENDANTS' CLAIM THAT THERE HAS BEEN NO BREACH OF CONTRACT

At pp. 177-181 of defendants' brief they argue that the claimed breaches of contract are merged into the tipping issue. This overlooks the statement at the beginning of the trial discussed at pages 6-8 of this brief where the breach of contract claim is separately listed as item 3 and the tipping issue is listed as item 2. Counsel cannot obscure and narrow plaintiffs' position by merely saying so.

There is no doubt that the tipping issue is basic to plaintiffs' claim since it is to avoid the tipping of the Area that this action has been instituted. But it also seeks relief independently for the breaches of contract by defendants and the two issues cannot be merged as defendants seek to do.

Moreover, as we have pointed out previously, the tipping issue involves more than the conversion of Site 30 alone, as defendants' brief states. It involves, as we have argued at pp. 5 and 6 of this brief, all of the breaches by defendants which cumulatively give rise to the danger of

tipping, among which the conversion of Site 30 is included, but it is by no means exclusive.

At pp. 181-189 of defendants' brief they seem to argue that the City was free at any time to change the Plan in any manner and could not be held accountable to parties relying on the Plan to their detriment. This is a surprising conception for Government attorneys to be urging in dealing with a Government "partnership" with its citizens. In fact it appears that the Government housing officials simply were to be free to do as they see fit untrammeled by any rights the parties with whom they contract may have.

To state that proposition is to resolve it, since the law will not allow a contracting party to absolve itself in advance for any breach of contract it may perform. The City is bound by the terms of its contract just as any other contracting party would be and the contract clauses which authorize changes are clearly intended to cover mechanical and inconsequential changes only. They certainly cannot contemplate changes so profound (as the ones challenged in this action) that their inevitable effect would be to emasculate the entire contract.

Trinity's Reliance Upon the City's Representations

Another distortion in the defendants' argument is the attempt to tie the City's performance of its contract to specific oral representations made by Mollen to Lumbard. Aside from the fact that Lumbard testified that the representations were made, and his testimony is unchallenged on that point, it is clear that the City committed itself to produce 2500 units of low income housing as part of its performance of the Plan and that was one of the conditions under which plaintiffs and those similarly situated obligated themselves to perform under the terms of the Plan. Also the same representations were repeated by Jason Nathan before contract execution, a fact the Government simply ignores.

We have established in Plaintiffs' Post Trial Brief at pp. 46-55 that such oral representations become part of the contract and are enforceable in the same manner as express terms would be. Moreover, it is undisputed that the City did commit itself to the 2500 units of low income housing and its breach of that provision is clearly actionable, wholly aside from the "tipping" concept.

The personal attack on the veracity of Lumbard is totally unwarranted. Mr. Lumbard is a respected member of the Bar, has a long history of association with this Court and is a man of the highest integrity. The trivial items pointed to by defendants as constituting a basis for "disbelieving" his entire testimony do not merit discussion.

In evaluating the defendants' bizarre contention that Trinity did not rely upon the City's representation we must not forget that Trinity obligated itself to a long term fixed obligation to the City for 50 years and in a total sum, including cash advanced, equity investment and mortgage obligations of over $9,000,000. In contrast, the Government is arguing that it should be allowed to have short term flexibility for all purposes with no obligation to anyone for its actions.

Lumbard's testimony is characterized as indicating that "he had no idea that the Plan had been or could be modified" (defendants' brief p. 185). That is contrary to Lumbard's testimony where he stated that he learned about the four plan changes when he looked at "the draft of the 1968 agreement." which contained referenc to the four prior plan changes.

But these changes were formal plan changes which required a whole machinery for approval which we have fully discussed. They certainly did not accord to the City the right to capriciously change the plan in its essentials (such as exceeding the 2500 units of low income housing, or admitting squatters, or excess welfare families) as defendants' brief attempts to convey.

As to the move to Pawling that was a matter that had been under discussion for a period of many years (probably before Judge Tenney became a Trustee) and since it was not subject to dispute no testimony other than Lumbard's was adduced.

The minute book was not put into evidence, although portions of it were read into the record, in order not to clutter it with voluminous documents.

The reason no one else was called to testify for Trinity is that Glover Johnson, (now deceased) former senior partner of White and Case was the only other member of the Board of Trustees of Trinity who took an active part with Lumbard in processing the project and his testimony was barred by the dead man's statute.

But these changes were formal plan changes which required a whole machinery for approval which we have fully discussed. They certainly did not accord to the City the right to capriciously change the plan in its essentials (such as exceeding the 2500 units of low income housing, or admitting squatters, or excess welfare families) as defendants' brief attempts to convey.

As to the move to Pawling that was a matter that had been under discussion for a period of many years (probably before Judge Tenney became a Trustee) and since it was not subject to dispute no testimony other than Lumbard's was adduced.

The minute book was not put into evidence, although portions of it were read into the record, in order not to clutter it with voluminous documents.

The reason no one else was called to testify for Trinity is that Glover Johnson, (now deceased) former senior partner of White and Case was the only other member of the Board of Trustees of Trinity who took an active part with Lumbard in processing the project and his testimony was barred by the dead man's statute.

The Trustees were indeed deeply concerned with the nature of the redevelopment and what it would do to the Area in which Trinity was located. (2035,2037)

The other trivial comments on Lumbard's testimony require no comment except to observe that it is incredible that a Government brief would so flatly characterize Mr. Lumbard as being "not accurate in his testimony".

The Brownstone Owner's Reliance Upon the City's Representations

In connection with the discussion in defendants' brief at pp. 190-203, the same elements discussed above as to the representations regarding the City's obligation to create a balanced, integrated community, apply. They were obligated not to exceed the 2500 units of low income housing, not to admit illegal squatters, not to admit excessive numbers of welfare families and to complete the plan within a reasonable period of time. These were conditions which were implicit in the entire redevelopment plan in addition to specific representations made to individuals who inquired, and the defendants are bound by them as part of their contract with plaintiffs and the others similarly situated in the Area.

The Merger Clause (Section 110 of the Contract)

The merger clause quoted at page 192 of defendants'

brief does not preclude reliance upon oral representations.

Defendants erroneously contend that a "general merger clause", such as Section 110 of the contracts between purchasers of brownstones and the City (Plaintiffs' Exhibits 35a and 2 annexed to plaintiffs' motion for leave to intervene), precludes the use of parol evidence to establish a breach of contract. Each of the cases cited by defendants squarely stands for the proposition that a general merger clause does not specifically exclude reliance upon oral representations.

In Fogelson v. Rackfay Construction Co., 300 N.Y. 334, 338 (1950), the court recognizes the principal that the rule forbidding the introduction of proof of an oral agreement to add to a contract does not apply where it is not so clearly connected with the transaction as to be "part and parcel of it"; and that the test is whether the parties would have ordinarily embodied such an agreement in writing. Since the courts will always imply a covenant to cooperate to achieve the aims of the contract, it is not likely that the parties would seek to embody such a provision in writing. Therefore, it is doubtful that the parties in the instant case would have embodied in writing a term to cooperate to create a balanced community.

Where the merger clause explicitly excludes oral representations regarding a particular subject, reliance upon oral representations regarding that particular subject

are excluded. See Danann Realty Corp. v. Harris, 5 N.Y. 2d 317 (1959) where the merger clause expressly excluded oral representations regarding rents, expenses and operations and plaintiff sued on the basis of representations regarding operating expenses and projects; Cohen v. Cohen, 1 A.D.2d 586, 151 N.Y.S. 2d 949 (1956); and where the merger clause specifically excluded representations regarding the parties' marital status and plaintiff sued on the basis of oral representations made by defendant regarding a reconciliation. However, in Section 110 of the contract there are no specific provisions excluding reliance upon representations made regarding the plans for the economic and racial composition of the Area, and therefore these cases cited by defendants are not applicable.

In Hamilton Life Insurance Co. of New York v. Republic National Life Insurance Co., 291 F. Supp. 236 (S.D.N.Y. 1968) and in Jones Memorial Trust v. T.S.A.I. Investment Services, 367 F. Supp. 499 (S.D.N.Y. 1973), the court excluded evidence of an oral agreement which would contradict express or implied provisions of the contract. Here there is no inconsistency between the express provisions of the contract and the oral representations plaintiffs wish to introduce.

As there is absolutely no mention in the written

contracts of the desired racial and economic composition of the Area, plaintiffs may base their claim on oral representations made by defendants regarding such facets of the Plan because: (i) a general merger clause does not preclude plaintiffs' reliance on oral representations that are not a part of the contract; (ii) there is no specific provision in the merger clause excluding reliance on representations regarding the racial and economic composition of the Area; and (iii) such representations in no way contradict other oral contract provisions.

Thus, it is clear that plaintiffs are entitled to rely upon oral representations despite the existence of Section 110 of the Hudgins and Karlen contracts.

The statement that a 70%-30% mix was first made at the end of 1972 is clearly in error. The term was used in the Trinity contract (Plaintiffs' Exhibit 14 at p. 14) on June 20, 1968 and had been discussed for some time prior to that time.

A610

Written Consent from Pilot Project Area

The discussion of the requirement for written consent of owners and lessees in the Pilot Project Area set forth at pp. 203-211 of defendants' brief has been fully answered in Plaintiffs' Post Trial brief at pp. 59-72 where it is spelled out that such consent is required.

In order to arrive at the conclusion that the consent is not required, defendants are compelled to resort to an erroneous interpretation of what Section R on page 17 of the Pilot Project Plan, means.

The language of the Section is as follows:

"R. Changes in Approved Plan

> This Final Plan may be modified at any time by the City of New York, provided that if any such modification affects any real property previously disposed of by the City in the Pilot Project area, written consent to such modification must be obtained from the purchaser or lessee of such real property."

The quoted language means that written consent is required of a purchaser or lessee of real property previously disposed of by the City in the Pilot Project area

where the modification affects such real property. The Plan change of Sites 4 and 30 which is the "modification" referred to in the clause, affects the real property of Hudgins and Karlen in that it will cause tension and deterioration in the Area and result in a loss in value of their property. Thus, since their property is affected by the modification their consent is required.

Defendants at p. 208 of their brief would read the clause to mean that it only applies where there is a "modification of the Pilot Project Plan" and is "irrelevant to modification outside of the Pilot Project Area, such as Site 30."

The history of the consent clauses in the Plan spelled out in our brief at pp. 69-72 sheds light on the correct interpretation of the language. The original clause in the Plan when it was approved in 1962 and quoted at p. 69 of our brief (Plaintiffs' Exhibit 22) required the written consent of a purchaser or lessee to any modification in the Plan. That was always interpreted to mean that written consent of prior purchasers or lessees was required irrespective of where the modification of the Plan occurred. It was that provision which gave rise to the difficulty described on p. 70

of our brief and which resulted in the changed clause quoted on p. 70 requiring consent only where the modification occurred to the property itself.

It is significant that the language of the two clauses are identical except that Clause R refers to "the Pilot Project area." Thus, the two clauses must be interpreted in the same way.

There was never any uncertainty as to the consent requirements under the original clause and when the provision became inconvenient, the whole clause was changed to require consent only where the modification affected the property itself. If the defendants' interpretation of Clause R were correct, no change in the original Clause F would have been required.

Thus, it is clear from the language of Clause R itself and the history of the consent clauses in the Plan that written consent to the Plan change is required from Hudgins and Karlen and it is conceded that consent was not obtained.

The Pilot Project NY-D-5 is incorporated into the Urban Renewal Plan and made a part of it as if fully set

forth in accordance with Schedule C-1 Section D.1.a.3 at p. 20 of the Plan.

The provisions of Section 405 of the Hudgins and Karlen contracts (quoted at p. 208 of defendants' brief) providing that where there is an inconsistency in the provisions of the Plan and the Pilot Plan, the provisions of the Plan shall govern, does not affect the situation, since there is no inconsistency. The two provisions (Clause F and Clause R) are independent of each other. Clause R concerns owners in the Pilot Project Area only, whereas Clause F deals with other owners.

The two clauses do not conflict since they deal with different situations and consequently the inconsistency clause (Section 405) has no applicability.

AS TO ATTORNEY'S FEES AND COSTS

As outlined in POINT III of Plaintiffs' Post Trial brief, at pages 132-141, plaintiffs are entitled to recover reasonable attorney's fees and costs against the City and Strycker's Bay, whether or not they prevail on the merits based on: (1) the common benefit theory; and (2) the private attorney general theory as applied in cases involving the Civil Rights Laws and the National Environmental Policy Act.

We have established that the City has waived its sovereign immunity by engaging in a proprietary function subject to federal regulation and since the City's immunity is derived solely from that of the State, by the State's enactment of Section 8 of the Court of Claims Act.

If plaintiffs prevail costs and reasonable attorney's fees are recoverable against the United States. 28 U.S.C.A. §2412 provides for the award of costs against the United States or any agency or official of the United States, in favor of the prevailing party. 42 U.S.C.A. §2000-5(k) provides for the award of reasonable attorney's fees as part of the costs against the United States in favor of a prevailing party in Civil Rights litigation.

The award of attorney's fees in such cases is not considered merely discretionary, but as essential to providing complete equitable relief.

Defendants at page 212 of their brief maintain that plaintiffs are entitled to costs only if they prevail and that plaintiffs are not entitled to an award of attorney's fees against any of the defendants irrespective of whether or not they prevail.

Defendants suggest at pp.213-214 that the common benefit exception to the general rule that parties bear their own costs is inapposite here because the court does not have jurisdiction over any fund from which it may allocate the costs of this litigation.

Defendants acknowledge the private attorney general exception as applied in Wilderness Society v. Morton, 6 E.R.C. 1427 (D.C. Cir. 1974), where the court awarded plaintiffs reasonable attorney's fees although they did not "prevail", in the traditional sense, because they had served as a catalyst to effectuate changes in plans and to secure compliance with the National Environmental Policy Act (DB 214-215). However, defendants limit the applicability of the private attorney

general exception to cases where plaintiffs acted solely for public benefit.

Defendants argue that 28 U.S.C.A. §2412 serves as a bar to an award of attorney's fees against the United States. They also argue that plaintiffs' claim against the City involves no issues of public interest, thereby eliminating the applicability of the private attorney general exception, and further that attorney's fees should not be awarded against Strycker's Bay because they claim to be advocates of public interest issues.

1) Plaintiffs Are Entitled To An Award Of Costs Against The City And Strycker's Bay Even If They Do Not Prevail.

All parties agree that pursuant to 28 U.S.C.A. §2412 costs may be awarded against the United States only in favor of a prevailing party.

It is within the equitable discretion of this court to award to plaintiff, if it is a non-prevailing party, costs against the City and Strycker's Bay. In both Wilderness Society v. Morton, supra, and Sierra Club v. Lynn,364 F.Supp.834,847, 5 E.R.C.1745,1747 (W.D. Texas 1973) costs were awarded to plaintiffs who had conferred a substantial benefit upon the public by litigating the issues, but who had not prevailed on the merits.

2) The Common Benefit Exception Is Applicable Even Where No Pecuniary Recovery Is Possible.

The defendants cite Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), as supporting the proposition that there must be a monetary recovery in order to award costs on attorney's fees. To the contrary, the court in Mills, supra, at 392 applies the common benefit rationale, stating: "The fact that this suit has not yet produced, and may never produce, a monetary recovery from which the fees could be paid does not preclude an award based on this rationale."

Similarly in Hall v. Cole, 412 U.S.1, 93 S. Ct. 1943, 1948 (1973); Globus, Inc. v. Jaroff, 279 F. Supp. 807 (S.D.N.Y. 1968); and Schectman v. Wolfson, 244 F. 2d 537, 540 (2nd Cir. 1957) the courts awarded attorney's fees in the absence of a monetary recovery under the "common benefit rationale", and in each case did so with an explicit statement regarding the courts' jurisdiction to do so.

As Trinity has brought this action for the common benefit of all residents of the Area, the case falls squarely within the common benefit theory and no pecuniary recovery is necessary to place the case within that exception.

3) The Private Attorney General Exception Does Not Apply Only To Plaintiffs Who Have Acted Solely For the Benefit Of The Public.

In applying the private attorney general exception the courts have continually awarded attorney's fees in favor of individual litigants who, while vindicating public rights of high priority, were doing so on the basis of violations against themselves, personally.

The civil rights cases which have recognized the private attorney general exception have involved suits to vindicate an important public policy, where an individual has

personally been the target of discrimination. See Bell v. School Board of Powhatan County, Virginia, 321 F. 2d 494 (4th Cir. 1963); Lee v. Southern Home Sites Corp., 444 F. 2d 143 (5th Cir. 1971); and Newmann v. Piggy Park Enterprises, Inc., 390 U.S. 400 (1968).

In Hall v. Cole, 412 U.S.1, 93 S. Ct. 1943, 1948 (1973), the court awarded attorney's fees where through vindication of an individual right, a public policy was served:

> "Viewed in this context there can be no doubt that, by vindicating his own right of free speech guaranteed by §101(a)(2) of Title I of the LMRDA, respondent necessarily rendered a substantial service to his union as an institution and to all of its members."

Although plaintiffs assert their personal rights to live in an integrated community and their personal rights to insist upon a careful analysis of the environmental impact of changes in the Plan on their community; they are simultaneously vindicating the rights of the Area community at large. In doing so, plaintiffs are acting as private attorneys general, vindicating public issues of high priority.

4) Under The Private Attorney General Exception Plaintiffs May Recover Attorney's Fees Against: (a) The United States Or Its Officers Or Agencies If Plaintiffs Prevail; (b) The City Of New York; and (c) Strycker's Bay.

(a) Recovery Against The United States Is Authorized By 42 U.S.C.A. §2000e-5(k).

28 U.S.C.A. §2412 serves as a bar to an award of attorney's fees against the United States only when there is no explicit grant to the contrary: 42 U.S.C.A. §2000e-5(k) is such an explicit grant, providing for the award of attorney's fees against the United States in favor of a prevailing party in civil rights litigation.

(b) Recovery Against The City Is Permissible Under The Private Attorney General Exception.

Plaintiffs' claim against the City of New York is not, as defendants suggest, merely a breach of contract claim because the implications of that breach are loaded with public interest considerations.

The City's position as the applicant for assistance from HUD in the instant case is directly analogous to that of the Applicant for HUD Assistance in Sierra Club v. Lynn, supra. In that case reasonable attorney's fees were awarded against the applicant for Federal assistance in favor of plaintiffs who had not prevailed on the merits. Therefore, as an applicant for assistance from HUD the City has subjected itself to liability for plaintiffs' attorney's fees under the private attorney

general exception as applied in cases involving the National Environmental Policy Act.

Also, the City's failure to comply with the terms of the contracts between the City and plaintiffs as site sponsors, gives rise to an action against the City for a violation of Equal Protection and the Civil Rights Acts by denying plaintiffs the opportunity to live in an integrated community. Therefore, the plaintiffs' claims against the City involve both public issues related to environmental protection and civil rights, making appropriate application of the private attorney general exception against the City.

(c) It is Consistent With The Private Attorney General Exception To Award Attorney's Fees Against Strycker's Bay.

Defendants argue that an award of plaintiffs' attorney's fees against Strycker's Bay is in opposition to the rationale behind the private attorney general exception: that rationale being that the exception is necessary to avoid the unjust deterrence of the litigation of issues of public interest. Defendants suggest that awarding costs against Strycker's Bay will serve to deter Strycker's Bay's future participation in the litigation of public issues.

In this connection it should be noted that Strycker's Bay is in this case voluntarily and on its own motion as intervenor.

Defendants' view overlooks two important considerations: (1) the point of view advocated by Strycker's Bay was already adequately advocated by the named defendants (as exactly established in fact by its filing a joint brief without a separate point or even word as to any different position or even emphasis); and (2) that Strycker's Bay as a government funded "representative"of community interests should bear its share of costs in return for the benefits conferred by plaintiffs in initiating and maintaining litigation to compel clarification of, and compliance with environmental policies and civil rights legislation.

On the first point, it was of greater public advantage to encourage representation of public interests which were not already adequately represented and of which there was inadequate official acknowledgement. Whereas plaintiffs initiated the litigation of public issues, defendant-intervenor merely aligned itself with a position already officially recognized and supported.

With respect to the second point, the courts in Wilderness Society v. Morton, supra, at 1433 made clear that those sharing in the benefits accruing from litigation should share the costs:

> "Fee shifting under the private attorney general theory, however, is not intended to punish law violators, but rather to ensure that those who have acted to protect the

> public interest will not be forced to shoulder the entire cost of litigation."

Similar considerations are referred to by the courts in Mills v. Electric Auto-Lite Company, supra; Globus, Inc. v. Jaroff, supra; and Hall v. Cole, supra,

Therefore, to encourage the initiation of the litigation of public interest issues where there is inadequate representation of that interest and in order to prevent the imposition of the entire cost upon those seeking to protect such interests, an award of attorney's fees against Strycker's Bay is appropriate.

In conclusion, plaintiffs are entitled, under equitable principles, to an award of costs and reasonable attorney's fees irrespective of whether they prevail in the litigation, based upon the common benefit and private attorney general theories. Plaintiffs are entitled to such an award against the United States only if they are the prevailing party, whereas, an award against the City and Strycker's Bay is appropriate regardless of whether plaintiffs prevail.

CONCLUSION

The plaintiffs in this case want a balanced integrated Area. They are not bigots and they are not against housing low income families in the Area with them.

The defendants would however load an excessive number of low income families into the Area in a manner which will inevitably cause the Area t tip and to become a segregated ghetto.

Although conditions in the Area are currently deplorable there is nevertheless still time to save it provided the violations of the Plan which have occured and which are in contemplation are curbed by this Court. We are at the zero hour and if action is not taken at this time the irreversible process of tipping will have set in and it will be too late to do anything. All the investment of time, money and effort will have been for naught.

Should the Court decide to intervene it should be done on a basis where there is day to day supervision of the execution of the Plan to completion and that should be accomplished by the designation of a Special Master to oversee the future activities of all of those involved.

Respectfully Submitted,

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs
and Plaintiffs-Intervenors

Dated: June 25, 1974
Of Counsel
Eugene J. Morris
Martin Stuart Baker

71 CIV 4315

U.S.D.C. - S.D.N.Y.

EXHIBITS